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LONG-AND-SHORT HAUL ON RAILROADS

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

SIXTY-FIFTH CONGRESS

SECOND SESSION

ON

H. R. 9928

MARCH 26 TO APRIL 2, 1918



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LONG-AND-SHORT HAUL ON RAILROADS.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Monday, March 25, 1918.

The committee met at 10.30 o'clock, a. m., Hon. Thetus W. Sims (chairman) presiding.

The CHAIRMAN. The committee has met this morning to hear gentlemen in reference to House bill 9928, a bill to amend section 4 of the act entitled "An act to regulate commerce" approved February 4, 1887, as amended June 18, 1910.

I want to make this suggestion to those in charge of the hearings both for and against the bill, that the older members of this committee, especially Mr. Hamilton, Mr. Esch, and myself, and perhaps others, and those who are members of the joint select committee, have heard arguments for and against this section quite at length. I understand there is a Senate bill pending for the same purpose, and that there have been rather extensive hearings before the Senate Committee on Interstate Commerce.

What I would suggest, along the line of shortening the hearings before this committee, is this, that permission will be granted to print any portions of the hearings which have been held by the joint committee on this subject, either for or against the bill, and also the hearings of the Senate committee. Anyone appearing before this committee will have permission to print any portion of those hearings and make them a part of the hearings of this committee upon this bill. If the gentlemen who want to be heard, on both sides of this proposition, will take that into consideration, it will relieve both them and the committee of a good deal of labor, and we will be able to get the same results.

Those who desire to appear in favor of this bill will be heard first, and those who are opposed to the bill will be heard next. We would like to get through with these hearings to-morrow, if possible. Mr. Shaughnessy, are you in charge of those who are in favor of this bill?

Mr. SHAUGHNESSY. I am, Mr. Chairman.

The CHAIRMAN. Who is in charge of those on the other side?

Mr. SHAUGHNESSY. Mr. Seth Mann is here, from San Francisco.

The CHAIRMAN. Mr. Mann, will you be in charge of those who are opposed to the bill?

Mr. SETH MANN. We have not elected anyone to be in charge of those who are opposed to the bill, Mr. Chairman. I think, Mr. Chairman, it is selfevident that we can not complete the hearing of those who want to be heard in two days, unless we print what was said before the Senate committee, according to your suggestion.

The CHAIRMAN. Do you think it can be done by adopting the method of printing the testimony that has already been given?

Mr. SETH MANN. I fully agree with you in regard to that, so far as the testimony of those who have appeared before the Senate committee and who also desire to appear before this committee is concerned, but there are some witnesses in attendance at this hearing and some who will be here who were not present before the Senate committee last week, and their statements would be additional statements. There was a gentleman coming from Texas who desired to present the Texas situation.

The CHAIRMAN. I know if we hear everybody at length who wants to be heard, we could not complete these hearings in two days, but we would like to complete them in two days, if possible, because on Wednesday the hearings in reference to the Water-power bill will be resumed.

Mr. F. H. Wood. Mr. Chairman, Mr. H. A. Scandritt is here representing the railroads. There were a number of railroad witnesses who appeared before the Senate committee, but so far no railroad witnesses have testified before the joint committee, as the chairman will recall. The chairman said that the matter might be expedited by printing as a part of this record the testimony that was given before the Senate committee, and that is entirely agreeable to us, but I desire to make this reservation, that if there is to be an exposition de novo upon the part of the proponents of the bill or anything approaching that, that we would expect to be heard at length also.

The CHAIRMAN. Certainly; we expect to treat everybody with fairness and give everybody an equal opportunity to be heard.

We are ready to hear you now, Mr. Shaughnessy, but I want to say before you start that it is understood that this hearing is to be confined to this bill and the subjects embraced in it.

STATEMENT OF MR. JOHN F. SHAUGHNESSY, PRESIDENT OF THE INTERMEDIATE RATE ASSOCIATION, 401 COLORADO BUILDING, WASHINGTON, D. C.

Mr. SHAUGHNESSY Mr. Chairman, my name is John F. Shaughnessy. My residence is Carson City, Nev. I am a member of the Nevada Railroad Commission and president of the Intermediate Rate Association, with headquarters at 401 Colorado Building, Washington, D. C.

The Intermediate Rate Association is a voluntary organization and has for its members and support railroad commissions and commercial and traffic organizations throughout Southern and Western States.

The association desires to enter its appearance as a party of record in support of the Hayden long-and-short-haul bill, H. R. 9928. This bill is the same as the Poindexter bill, S. 313; the Shafroth bill, S. 1471; and the Henderson bill, S. 3777, upon which hearings were held before a subcommittee of the Senate Committee on Interstate Commerce from March 13 to March 21, inclusive.

On behalf of the Intermediate Rate Association, I also wish to enter the appearances as parties of record in support of the Hayden bill the following member organizations, including certain represent-

atives thereof who are here and will make statements before this committee: The Railroad Commission of Arizona; the Railroad Commission of Montana; the Railroad Commission of Nevada; the Railroad Commission of Utah; the Railroad Commission of Idaho; the Railroad Commission of New Mexico; the Railroad Commission of Texas; the Railroad Commission of South Carolina; the Railroad Commission of Mississippi; the Railroad Commission of Indiana; the Dallas (Tex.) Chamber of Commerce; the Fort Worth (Tex.) Freight Bureau; the Greenville (S. C.) Chamber of Commerce; the Columbia (S. C.) Chamber of Commerce; the Reno (Nev.) Commercial Club; Mr. John R. Corey, secretary of the Hastings (Nebr.) Chamber of Commerce; the Lewiston (Mont.) Chamber of Commerce; the Retail Mercants' Association of Montana, with headquarters at Helena, Mont.; the Helena (Mont.) Retail Merchants' Exchange; the Helena (Mont.) Commercial Club; the Bozeman (Mont.) Chamber of Commerce; and the Boise City (Idaho) Commercial Club.

Then I also desire to enter the appearances separately of the following gentlemen, who will appear here in support of the bill: Mr. H. F. Bartine, chairman of the Nevada Railroad Commission; Mr. F. A. Jones, chairman of the Arizona Railroad and Corporation Commission; Mr. Allison Mayfield, chairman of the Texas Railroad Commission; Mr. A. L. Freehafer, a member of the Idaho Railroad Commission; Mr. W. S. McCarthy, for the Salt Lake Traffic Bureau; Mr. J. B. Campbell, for the Spokane Chamber of Commerce; Mr. George B. Graff, for the Boise City (Idaho) Commercial Club; Mr. Leonard Way, traffic manager and statistician for the Railroad Commission of Idaho; and Mr. Charles W. Smith, secretary of the Intermediate Rate Association. That constitutes the appearances we have to enter at this time.

Since the 15th of March, I wish to say by way of explanation, no fourth-section violations in transcontinental rates on westbound traffic to intermountain territory are now imposed against us, and this is because the Interstate Commerce Commission has made a final order in the Intermountain Rate case (48 I. C. C., 79), removing all long-and-short-haul discrimination on westbound traffic. However, on eastbound transcontinental traffic, most of which moves at blanket and zone rates, there are some long-and-short-haul discriminations, such as wool, sugar, and flour, for example.

Now, the reason why we are complaining, and why we are here in support of this legislation, is because there is absolutely no security upon which intermediate communities throughout the southern and western States may depend under the present fourth section of the act to regulate commerce, as administered by the Interstate Commerce Commission, and as construed by the courts whenever appeal has been made to the courts; therefore we are appearing at this time before your honorable committee asking that Congress announce a new policy which will give to us that security to which we are fairly and reasonably entitled, in order that all sections of the country may develop in proportion as their resources and their energy fairly justify.

The CHAIRMAN. The Interstate Commerce Commission have dealt with this matter in a recent opinion, have they not?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. Have you available a copy of their opinion?

Mr. SHAUGHNESSY. I have; yes, sir.

The CHAIRMAN. You might put that in the hearings as a part of your statement.

Mr. SHAUGHNESSY. I will introduce a copy of that at the close of my remarks.

Mr. Chairman, in order to make our position clear on the bill here under consideration I wish to put before the committee, in brief though comprehensive form, a statement of the policy which has been adopted by the Intermediate Rate Association. Thereafter, because of the limitation as to time which the witnesses on our side will have, I shall forego making an extended rate analysis and ask that my testimony given before the Senate committee last week be incorporated as part of my testimony in this hearing.

Mr. WETTRICK. Mr. Chairman, may I ask at this point whether the statement that Mr. Shaughnessy is now going to put into the record was not put into the record, word for word, in the hearings of the Senate committee; and if so, whether this is not the place to begin to save time, because I am sure if only two days are to be devoted to these hearings, and Mr. Shaughnessy is going to repeat his whole statement, the rest of us will not have any time.

Mr. SHAUGHNESSY. Mr. Chairman, the statement I wish to make at this time is very brief, and it puts in the most concise form the position of the Intermediate Rate Association and others who are proponents of this bill now under consideration, and the reasons why we are supporting it, and why we are asking relief at the hands of Congress, and therefore I think it is very important that the committee hear what I have to say.

The CHAIRMAN. You may proceed.

Mr. SHAUGHNESSY. I will not duplicate the testimony which I gave before the Senate committee, and which I will ask to incorporate later, any more than possible. I will not encroach upon the time of the other gentlemen, if that is what Mr. Wettrick means.

Because of the construction placed on the "proviso" of the fourth section, permitting exceptions and authorizing the charging of less for the longer than for the shorter distance, a governmental policy has been established, and large industrial and commercial centers accorded these preferential railway rates under the guise of meeting either water or rail competition, or both, have been built up at the expense of "intermediate point territory" in all southern and western States by the latter points being compelled to pay higher short-haul rates than otherwise would have been necessary if rates were uniformly applied to all points.

When effort has been made to invoke the rule of the present fourth section for the purpose of having these higher short haul rates removed, action by the Interstate Commerce Commission has been exceedingly slow, expensive, and unsatisfactory, because all fourth section decisions contain qualifying language inviting reconsideration of the relief granted upon a return of water competitive conditions, and therefore a foundation of reasonable security is not afforded to intermediate point territory. Further, because all fourth section decisions have been and are so qualified, uncertainty

exists to such an extent that the beneficial effect of the relief, when granted, has been largely offset, and therefore local and outside capital for industrial and commercial enterprises can not be secured for our intermediate points in competition with the farther distant preferentially low rate centers. In fact, it would be a hazardous investor indeed who would, or will at present, or for the future, risk large capital in industrial or commercial enterprises within intermediate point territory in southern and western States under the act as it is to-day, and the only manner in which this disability can be expeditiously and permanently cured is to have Congress prescribe an absolute rule by which investors may be assured of at least an equal opportunity in so far as railroad transportation charges are concerned. Capital, therefore, can not be secured at the present time for the short haul intermediate points because of these railway rate differentials in favor of the long haul centers, and this will remain true even though the rates are made uniform and the short haul discrimination removed by increasing the rates at the long haul points during the war, which it is said the Director General of Railways will require. Manifestly in order to establish confidence and encourage investments a declaration by Congress that the short haul rates shall at least be no greater than the long haul rates is absolutely essential before capital may be safely employed in industrial and commercial enterprises within intermediate point territory. Otherwise these investments following the return of the railways to private operation at the close of the war and the establishment of effective water transportation will be at the mercy of the old competitive forces and doubtless quickly destroyed by the railways again lowering the rates at the long haul points—the effect of which will be to further centralize industry, wealth, and population at the large commercial and industrial centers at the expense of and while retarding the normal development of intermediate point territory.

Historically speaking, it should be stated that an effort was made to correct this condition of affairs as far back as 1887, when Congress passed the original act to regulate commerce and provided that no greater charge should be made for a shorter than a longer haul, but so qualified it that the railroads were later able to make the fourth section a dead letter. For approximately two years the railroads filed tariffs in conformity with the absolute long and short haul rule, but thereafter tariffs were filed reestablishing long and short haul rates, and because of qualifying language in said section regarding dissimilarity of circumstances and conditions, the Federal courts held that the carriers might violate the long and short haul rule. These violations continued unrestrained very much as if no law had ever been passed by Congress until 1910, at which time the fourth section was amended by reaffirming the long and short haul rule, but it was again qualified by giving to the Interstate Commerce Commission jurisdiction in exceptional or special cases to authorize the carriers to depart from the absolute provision of said rule. In due time the carriers filed thousands of applications for exemptions from the amended section and therefore all existing long and short haul rates remained as they were, pending investigation and determination by the commission. The major portion of these violations were found in southern and western territory and were consolidated and

decided under what are known as the Southeastern cases (30 I. C. C., 153, 1914) and the Intermountain Rate cases (21 I. C. C., 329-234, U. S., 476, 1914). Both of these cases were finally passed upon by the commission and the courts during the year 1914, or approximately four years after the passage of the amended fourth section in 1910. As a result of this action some short haul rates higher than the longer haul rates were corrected; some were modified and some were not touched at all, and therefore the entire rate fabric throughout these great inland territories at this time is honeycombed with artificial fourth section violations.

It should be stated in passing that an order removing the discrimination in intermountain territory was made on June 30, 1917, and later suspended indefinitely. Under date of January 21, 1918, said order was revived to become effective March 15, 1918. In this connection it is proper to mention that there has been no effective water competition between the Atlantic and Pacific coasts since the slides in the Panama Canal in 1915. It is also proper to note in passing that there is not at the present time nor has there been for a long time any effective water competition of such a character as to justify the grossly unjust and discriminatory long-and-short-haul rates that are assessed against intermediate points throughout all of the Southern States.

The great intermediate and producing territory of the United States although numerically superior in voting population to the preferentially favored industrial and commercial centers, lacks organization, whereas, on the other hand, the large industrial and commercial interests have always been, and are to-day, strongly organized and heretofore have been closely affiliated with the railroads in promoting their own growth and prosperity, and, incidentally, that of the railroads by promoting long and double haul business, all of which has been largely at the expense of the great interior and producing districts. And whenever we have appeared before the Interstate Commerce Commission, not as a nation-wide producing and consuming organization as we should have done, but instead, in sectional groups asking for the enforcement of the absolute rule, we have found arrayed against us strong attorneys and representatives from specially favored railroad-rate points opposing the relief we sought and strenuously contending that the "proviso" of said section should be made effective to the exclusion of the absolute rule, because, as a result of water-compelled rates, industry, capital, and population have been centralized at the established centers which they represent; that the channels of trade have thereby become established and should not be disturbed; that because of the strategical location of these industrial and commercial centers on navigable water—either inland or ocean—they have a "God-given" and therefore a "vested right" in a lower scale of rates than is granted to intermediate and producing-point territory.

In other words, that they are entitled to the benefits that they might have secured by the development and effective utilization of the Nation's natural waterways but which they have not taken advantage of, yet because of the potentiality of their location on these waterways, upon which the Nation at large has expended as of July 1, 1916, \$898,500,000 on rivers and harbors, and \$450,000,000

on the construction of the Panama Canal in aid of the development of waterway transportation by private capital, these great industrial and commercial interests contend that they should be accorded the benefit of preferential all-rail rates; and this in spite of the low water rates and dependable service which they might have enjoyed if advantage had been taken of their "God-given opportunities" and they had participated in developing, patronizing, and making waterway transportation an effective and efficient instrumentality. Taken from this viewpoint it is apparent that the intermediate points might more properly contend and with much better grace make the argument for these all-rail preferential rates than the large industrial and commercial centers on the ground that such rates are necessary to equalize the natural advantages of the latter which are afforded by waterway transportation from and to all the markets of the world, and thus insure a more uniform development of the Nation's resources by promoting an equitable distribution of industry, population, and wealth.

Thus far our unorganized communities have been the prey of these organized forces, and as a result our intermediate point territory has been limited in its growth and development merely because there were defined natural waterways which the railways in their efforts to monopolize transportation wanted to keep from developing into really effective transportation agencies. Must we continue further under such a handicap? Note the effect of this unwise policy. In the face of the present world-wide war the Government finds that much-needed water transportation, both inland and ocean, is largely only something to talk about and that adequate facilities therefor are not in existence when vitally needed to relieve the congestion incident to the war. But in this connection, as it is now the announced policy of the Nation to protect and promote the building up of waterway transportation, one of the first and most necessary steps in this direction is the passage of an absolute long-and-short-haul law. Otherwise, for the reasons referred to herein, there can be no real or thorough-going security, in fact, not even reasonable security against radical changes in rates to meet water or rail competition, and therefore the enormous sums of money necessary for the promotion and the building of modern and efficient waterway transportation lines can not be secured from private investors. This medium of transportation should be encouraged in every legitimate way and investments therein made equally as inviting and safe as in railways.

The railways have now passed into Government control and operation for the period of the war. Certainly it can not be said that the Government will desire to promote or favor any particular section or sections at the expense of other sections of the country, and most assuredly it can not be argued that it will waste any time in promoting railroad competition or permitting the continuation of low preferential rail rates, which in the past has had the effect of destroying waterway transportation. In fact, the governmental policy during the period of the war will doubtless be quite the contrary, and probably every legitimate aid and encouragement will be afforded for the building up of waterway transportation, but if it and new enterprises for intermediate point territory are to be

assured of reasonable national consideration and protection following the close of the war they must be protected from almost certain destruction by the expedient of a ruinous railway rate war at the expense of intermediate point territory, such, for example, as was staged under the present fourth section of the act to regulate commerce immediately following the opening of the Panama Canal in 1914.

For the purpose of encouraging and safeguarding local and outside capital for the development of efficient and adequate waterway transportation and for industrial and commercial enterprises within intermediate and producing point territory and thus insuring that said territory may in the future develop and prosper in proportion as its resources and energy justify, absolute long-and-short-haul bills have been introduced in Congress by Senators Poindexter, of Washington; Shafroth, of Colorado; and Henderson, of Nevada; and by Congressman Hayden, of Arizona.

In a general way, Mr. Chairman, that is an outline of the position taken by the Intermediate Rate Association, and we shall undertake, by the testimony of our different witnesses, to build upon that and make the matter entirely clear to the committee.

I wish to refer briefly to the commission's recent order of January 31, in the Intermountain Rate cases (48 I. C. C., 79), which became effective on westbound transcontinental business March 15, and to state that the reason for that order is because there is no water transportation between the Atlantic and Pacific coasts, nor has there been any since the slides in the Panama Canal in 1915.

The fourth section of the act to regulate commerce, as you so well know, Mr. Chairman, was amended in 1910 so that it made unlawful the collection of a greater charge for a shorter than for a longer haul, the shorter being included within the longer when over the same line and in the same direction, with the "proviso" that the Interstate Commerce Commission might in "special cases" grant exceptions from this absolute rule.

Now, then, we have been until this time getting the members of the Interstate Commerce Commission to make up their minds that they should enforce the absolute long-and-short-haul rule of this fourth section as amended in 1910. Finally, however, they have made an order, although there has been no water transportation during the past two and a half years, which gives to use the same rate that is now given to the Pacific coast terminals on westbound transcontinental traffic. But in this connection the discrimination was removed largely by increasing the rates to the Pacific coast terminals instead of reducing all rates at the intermediate points to the basis of the rates formerly maintained at these Pacific coast terminals.

Mr. ESCH. Does that apply to commodities or to class rates, or both?

Mr. SHAUGHNESSY. It applies exclusively to commodity carload rates, the discrimination as to class rates having been removed several years ago. In fact, the class-rate discrimination was removed by an order of the Interstate Commerce Commission in 1910, just prior to the amendment of the fourth section; but the class rates do not move a large percentage of the traffic. The great volume of the traffic movement to the Pacific coast and to the intermountain territory is moved on carload commodity rates.

The CHAIRMAN. The recent order applying to the fourth section, as you interpret it, under the provisions of this bill is construing and holding the fourth section as applicable while the troubles in the Panama Canal exist.

Mr. SHAUGHNESSY. Yes, sir; exactly so.

The CHAIRMAN. And the inference is that they would not have so held if the Panama Canal was open for traffic?

Mr. SHAUGHNESSY. Yes, sir; that is absolutely true, because of the policy to which they had become wedded and as showing how strictly committed to the exception or "proviso" of the fourth section the commission has become, I want to put before you a quotation from their decision which more clearly illuminates the point than any statement of mine could:

When water competition again becomes sufficiently controlling, in the judgment of the carrier, to necessitate a reduction of the rates to the coast cities to a lower level than can reasonably be applied at intermediate points, the carriers may bring the matter to our attention for such relief as the circumstances may justify. Competent proof must be submitted in connection with such applications of a fairly regular water service between the two coasts. The adaptability of the traffic to water competition, the principal points of origin of the traffic, the range of rates afforded by the water line, the principal points of consumption, and the ports upon the two seaboards at which the water carriers receive and deliver the freight.

Now, gentlemen of the committee, could anything be stronger than this language? While, for the time being, the commission has put into effect the absolute rule of the fourth section, and thereby removed the long-and-short-haul discrimination which formerly existed, yet we have hanging over us this invitation to the carriers that they can appeal to the commission and that it will restore the old discriminatory conditions. Under these circumstances, therefore, you can see how uncertain and insecure our transportation situation is and why we are here asking that Congress step in and make a positive declaration on the question.

The CHAIRMAN. Does that mean that the commission in the future, when water competition is established at the ports, will not only permit the railroads to meet them on port shipments but will permit the railroads to continue to charge more to intermediate points on the same line going in the same direction than they do now?

Mr. SHAUGHNESSY. Yes, sir; they are dealing with that kind of a situation in the opinion I quoted from when they removed the discrimination against us. That is what it means absolutely, and that illustrates the vice of this system of long-and-short-haul discrimination that we are complaining of.

The CHAIRMAN. I understood that the trouble has been heretofore that the act of 1910 provided that the fourth section relief should be suspended during the investigation and examination of existing rates, or rates that then exist, and that the long period of time the commission has used in making those investigations has retained, in part, the discriminations that were shown in favor of coast points as against intermediate points at that time by the railroad companies.

Mr. SHAUGHNESSY. Yes, sir, Mr. Chairman, that has been the effect.

The CHAIRMAN. Now, has the commission finished its investigation and passed upon that question? There were about 10,000 applications, I believe.

Mr. SHAUGHNESSY. Yes, sir; there were about 10,000 applications, but I do not know how many of them have been passed on. I am not aware that they have ever adopted a basis upon which to measure the extent of the discrimination. On the contrary, it is my understanding that they have always taken into consideration the same varying circumstances and conditions that were used by the railroads in promulgating long and short haul rates prior to the amending of the fourth section, in 1910, and because there is no limitation provided by the section, the commission has exercised its discretion as to what it thought the extent of the discrimination should be, and in this connection it has been done without regard to any fixed measure as to the extent of the discrimination at the intermediate points.

The CHAIRMAN. If the commission, after the Panama Canal is open to restricted navigation and commerce, should permit a railroad from east to west, or from west to east, to compete with the water rate, does that mean that the commission would not hold that they should serve Reno or any of the intermediate cities at the same rate at which they will be serving the ports?

Mr. SHAUGHNESSY. I am unable to say definitely, but judging by the commission's established policy of the past, that must be the inference, Mr. Chairman. We are unable to construe it in any other light.

The CHAIRMAN. But that was referred to in the opinion you have read. It does not seem to me to be the equivalent to say that while we permit the ports to have a lower railroad rate that we shall also permit the railroad serving other points to charge more for the longer than for the shorter haul, going in the same direction. It does not seem to me it decides that question.

Mr. SHAUGHNESSY. Strictly speaking, that may be true. The Interstate Commerce Commission might come here and state, under the strict interpretation of that language, when the water competitive conditions again arise, that we may or we may not carry the same rates to the intermediate points, as to the ports. But the point we make is this, that we are going on year by year under this burdensome uncertainty, while our people in the intermountain country with their own capital—and the people in our country have capital—can not safely invest a dollar in industrial enterprises. I want to state, by way of reference to the financial standing of our people, that the Intermountain States show the highest per capita wealth in the United States. Our people have the money; they are progressive and enterprising, and will take a chance any time that they can be sure that they have anything approaching an equal opportunity with other sections of the country; and in order that they may have an opportunity to develop the exceedingly large and practically unlimited resources of the great intermountain empire, they should be accorded, at least, an equal opportunity in transportation rates.

Because of the uncertainty of the present rate situation, the carriers being in the position of being able, under the guise of meeting water and rail competition, to vary their rates upward and downward, there is no stability and we can not go to five or six of our local capitalists and say, put in \$25,000 or \$100,000 apiece and we will establish this or that kind of an enterprise. We can not go to

them and ask them to do that, and we can not solicit outside capital for any such enterprises, because there is no stability in the rate situation and, therefore, no security to be offered for the investment of capital within this great intermountain territory; also, what I have said here as to this territory is likewise true as to all intermediate territory throughout the Southern States. Under the present act we can not be assured of any stability or security in transportation charges, upon which so much depends, and therefore we are appealing to Congress to make a positive declaration upon the lines of the bill which you are considering here.

The CHAIRMAN. Really is not the act of 1910, the fourth section of that act, an absolute provision, with an exception applying to the period covered by the investigation of the applications made?

Mr. SHAUGHNESSY. Yes, sir; that is true.

The CHAIRMAN. As long as the Interstate Commerce Commission arbitrarily holds those examinations up and continues them indefinitely, you have a rigid law now?

Mr. SHAUGHNESSY. Yes, sir. Mr. Chairman: but in view of the established policy of long-and-short-haul discrimination which has been authorized by the Interstate Commerce Commission and the courts, that is really too uncertain a proposition upon which to invest capital and develop a new country.

We thought we had the relief which we need when you amended the law in 1910, and we were greatly pleased with your deliberations and actions at that time, and we were fairly satisfied, believing you had amended the fourth section in a fair and impartial manner, because you had declared for the absolute rule in the fourth section, providing that no greater charge should be made for the shorter than for the longer haul, the shorter being included in the longer, over the same line and in the same direction.

As to the "proviso," we believe that it would be exercised by the Interstate Commerce Commission in only very exceptional cases. But since the amendment, our experience has been this: That instead of the long-and-short-haul provision being made the absolute rule, the "proviso" or the exception has become the general rule. I do not mean by this statement that the commission has not cured a certain portion of the discrimination, or that they have not eliminated a substantial part of the discrimination that heretofore existed, but yet they have established a rule that, in my view, makes the exception the rule instead of giving to the long-and-short-haul provision the force and effect which Congress intended when the amendment was made in 1910.

The CHAIRMAN. I think if the Congress and the committee of the House had seen then that it was going to string out eight years they would have limited the period in which those suspensions could be had. But as far as the law is concerned, you really have a rigid long-and-short-haul clause now as to this point, that you can not charge a higher rate to an intermediate than you do to a water-competitive point.

Mr. STEPHENS. Is that the specific law, that you can not charge a higher rate?

Mr. SHAUGHNESSY. Yes; it is the declaration of section 4.

Mr. STEPHENS. If that is the law, how do they do it?

Mr. SHAUGHNESSY. Because of the "proviso" that has been given almost complete application to the exclusion of the long-and-short-haul clause.

Mr. STEPHENS. Then, it is not absolutely fixed to the effect that you can not do it?

Mr. SHAUGHNESSY. No; there is a "proviso," which authorizes the commission in special cases to permit the carriers to depart from the absolute law.

Mr. STEPHENS. Then, why not cut out the "proviso"?

Mr. SANDERS. They might as well not have passed the "proviso."

Mr. BARKLEY. What difference did the completion of the Panama Canal make, if any, in this discrimination?

Mr. SHAUGHNESSY. It very greatly increased the discriminations against us, because of a temporary increase in the water competition, following the opening of the Panama Canal. The carriers applied to the Interstate Commerce Commission for greater relief than they had theretofore secured, and the commission authorized rates, which very greatly increased the discrimination against all intermountain points. This feature of the case is very exhaustively dealt with in my testimony before the Senate committee, and I therefore ask that it be given consideration by the members of this committee.

Mr. BARKLEY. Take a consignment of freight from New York or from some other Atlantic port to San Francisco. Since the completion of the Panama Canal, there being water competition, the railroads are allowed to reduce the rates theretofore charged for through freight from New York to San Francisco to meet the competition of the canal, putting the rates on practically the same basis, both water and rail; is that true? They would not be exactly the same, or there would not be any competition, but they are allowed to bring the rates down to meet the rates of the water carriers.

Mr. SHAUGHNESSY. They are allowed, under the rulings of the Interstate Commerce Commission, to bring the rail rates down to what they call an equivalent rate, which is a rate somewhat higher than the water carriers' rate. It takes into account the insurance, lighterage, and all the various elements that enter into the water service, plus the greater facility of the railroad lines to meet the necessity for industrial tracks, and switching services, and things of that sort, and therefore the rail carriers can make a higher rate than the water carriers, and secure the business; that is what is meant by an equivalent rate. But because of these rates which the rail carriers have been allowed to make at the water ports while maintaining higher discriminatory rates at the intermediate points, they have taken the business away from the water carriers and practically destroyed waterway transportation in this country.

Mr. BARKLEY. What effect ought that to have on the rate charged on the same consignment of freight going to Spokane instead of Portland?

Mr. SHAUGHNESSY. That is the point. We contend that there should be no consideration given—

Mr. BARKLEY (interposing). Your contention is that the Panama Canal and the competition between water and rail for Pacific coast points ought not to have any effect at all upon charges made to intermediate points?

Mr. SHAUGHNESSY. That is our position, exactly.

Mr. BARKLEY. I agree with you.

Mr. SHAUGHNESSY. I am glad to hear you say that.

Mr. SANDERS. Your position is that the railroad ought not to be permitted to charge less to haul a car 3,000 miles than to haul it 1,000?

Mr. SHAUGHNESSY. That states it very concretely and concisely.

Mr. WINSLOW. Do you think the railroads can afford to do it, as a matter of a commercial undertaking?

Mr. SHAUGHNESSY. Now, that raises another point.

Mr. WINSLOW. How do you meet that point?

Mr. SHAUGHNESSY. That point is to be met by increasing the system of rates at large, if necessary, but subject, of course, to the first and at all times the controlling consideration that the rates must be reasonable. I think I have shown clearly in my testimony before the Senate committee that these so-called competitive rates to the Pacific coast terminals are in every way fairly compensative when measured by the cost of the service, and I invite your attention to the analysis which I have made. Rates in this country are made upon the principle that as distance increases the unit rate per ton may decrease, and therefore, generally speaking, the railroads do not undertake to make as low a rate per ton per mile for a short distance as they do for a long distance. If they want to make the unit rate per ton per mile somewhat higher for the shorter distance, subject to the limitation that the aggregate rate to the intermediate point shall be no higher than that maintained to the farther distant point, that may be done as a means of protecting the carriers' revenue, but in any event we want the question of this long-and-short-haul discrimination settled for all time; and we submit, with emphasis, that the prosperity of the railroads shall not longer be permitted to intervene as the chief and controlling consideration, when the best interests and the welfare of many States throughout the western and the southern territory are being sacrificed in order to further this so-called railroad competition.

Mr. WINSLOW. Let us take a concrete case. Suppose you start at Kansas City to carry 1 ton 10 miles, another ton 100 miles, and another ton 500 miles, and make a hypothetical rate for the 10 miles per ton. Will you illustrate that in dollars and cents and show how it will apply?

Mr. SHAUGHNESSY. I understand you want to take a hypothetical rate for the first 10 miles and then another for the next 20 miles and so on progressively?

Mr. WINSLOW. Say the rate is \$10 a ton for the first 10 miles.

Mr. SHAUGHNESSY. On that basis it would be \$10 for the first 10 miles, probably \$15 for the 20 miles, and \$20 a ton for the last zone, and so on up progressively.

Mr. WINSLOW. Do you not think there should be a differential in favor of the fellow who buys his ton and has it hauled 10 miles? You think there should be that differential, do you not? He can sell cheaper in his neighborhood than the man who has hauled at the \$15 or the \$20 rate.

Mr. SHAUGHNESSY. Yes; that is true under the mileage or zone basis of rate making.

MR. WINSLOW. You have an inequality established from the standpoint of the merchant who sells that kind of stuff every time you jump up the price. There is a commercial inequality, at all events.

MR. SHAUGHNESSY. Your idea being that it should be charged at a uniform rate.

MR. WINSLOW. I am trying to get your idea.

MR. SHAUGHNESSY. I am trying to get the drift of your question.

MR. WINSLOW. I think there are two propositions discussed in the transaction of business in these days. One is the cost of the merchandise delivered to the man who sells it. We will take Kansas City as a starting point, and say a man buys a ton of sugar at Kansas City and carries it 10 miles at \$10 a ton. Another man goes out and carries it 20 miles at \$15 a ton. Each of them has a point 5 miles between them, and one fellow carries either at the \$15 rate and the other at the \$20 rate, and they compete in the same territory. On that basis why can not the man who hauls it 10 miles sell it cheaper than the man who hauls it 20 miles?

MR. SHAUGHNESSY. He can.

MR. WINSLOW. Then there is a discrimination there against the merchant.

MR. SHAUGHNESSY. Yes; there is a certain discrimination there as between communities, which always follows on a mileage or zone system of rates, and that is supposed to be taken care of the Interstate Commerce Commission under sections 2 and 3.

MR. WINSLOW. We can agree on that.

MR. SHAUGHNESSY. We do agree on that.

MR. WINSLOW. So that there is no use of discussing that point further. That being so, let us look at it from the railroad point of view. The railroad which hauls it 10 miles and dumps it off has the large part of the practical expenses for the haul, all of the expenses except the haul itself, all the incidental expenses at the source and destination.

MR. SHAUGHNESSY. That is true; it has initiated the service.

MR. WINSLOW. So that if you follow the ordinary run of business, it has cost the railroad more per ton to carry it 10 miles than to carry it 20 miles.

MR. SHAUGHNESSY. Yes.

MR. WINSLOW. You do not contend that the freight rates should be exactly—

MR. SHAUGHNESSY (interposing). No, sir; they should be made in proportion to the cost of the local and the through business.

MR. WINSLOW. You divide it up in some kind of way?

MR. SHAUGHNESSY. I would average it on through long-haul traffic.

MR. WINSLOW. That is the zone system you would establish.

MR. SHAUGHNESSY. I am very strongly committed to the zone system, or to the almost complete blanket-rate system.

MR. WINSLOW. How do you feel about the zone system in the postal business?

MR. SHAUGHNESSY. It is working fine, so far as I can understand.

MR. WINSLOW. We get about a ton and a half of remonstrances every day in regard to that.

MR. SHAUGHNESSY. Naturally, you will. You can put in almost any kind of a zone system, and the breaking point between the zones

is going to cause complaint and conflict between the various interests. It is hard to find the exact point where the rates should break, and for this reason I prefer the blanket rates.

Mr. WINSLOW. Take it far and wide and considering the consumers as a whole throughout the country, where under your principle is the consumer going to benefit, taking the consumers' viewpoint?

Mr. SHAUGHNESSY. The consumers' viewpoint?

Mr. WINSLOW. Yes.

Mr. SHAUGHNESSY. Well, he will benefit in our territory—in fact, in all intermediate territory—to the extent that the intermediate points are not charged rates from 25 to 87½ per cent in excess of those charged at the farther distant points. As an illustration, I might cite this fact, at one time our rate from the East was reduced substantially; canned corn was selling in the market at 15 cents a can straight under the old rate, but as a result of the reduced rate the merchant was enabled to retail this corn and sell it at the rate of two cans for a quarter. That illustrates, in a general way, how the consumer will benefit if the unreasonably high rates, which have been maintained at the intermediate points in order to enable the carriers to lower their rates at the farther distant points to meet water competition, are reduced to a just and reasonable basis.

Mr. WINSLOW. Would an established price such as the Government is establishing nowadays help the situation? Would that relieve the situation?

Mr. SHAUGHNESSY. I do not believe it would. I think the prices in the various communities follow, quite largely, the general scale of transportation charges. In other words, it is the medium which largely sets the scale of commercial prices and the scale of labor prices, and everything else closely follow along the same line.

Mr. WINSLOW. Now, I would like you to help me out a little bit. For whom are you contending the consumer or producer, or whom?

Mr. SHAUGHNESSY. I am contending, if you please, Mr. Winslow, in my official capacity as a member of the Nevada State Railroad Commission, for the producer and consumer, including the commercial and industrial interests of the State of Nevada on the one hand and on the other I appear as president of the Intermediate Rate Association, which is made up of railroad commissions, chambers of commerce, commercial clubs, and traffic bureaus throughout southern and western States. The object of the association is to coordinate the efforts of all these organizations who are strongly interested in this legislation, and to make the best showing possible before Congress at this time. By way of further explanation, I may add, in my official capacity as railroad commissioner of Nevada, that I am authorized to appear before Congress, as I am now appearing, in support of this long-and-short haul measure, under authority of a joint resolution by our Nevada Legislature authorizing its railroad commission to appear before Congress and make the representation that I am now making. This authorization or legislative resolution that I refer to is incorporated as a part of my testimony before the Senate committee, which will be introduced in connection with my testimony before this committee.

Mr. WINSLOW. I felt, after hearing your testimony, that you were quite as much interested in making possible ways for the establishment of new industries—

Mr. SHAUGHNESSY. Yes.

Mr. WINSLOW (continuing). As in any particular branches?

Mr. SHAUGHNESSY. Yes, sir; we want to encourage and establish industries throughout our territory.

Mr. WINSLOW. That might be a wholesome thing and yet the consumers might get the worst of it at that, might they not?

Mr. SHAUGHNESSY. That is possible and is one of the elements that must be considered, but that is not altogether the case. There are some things we can handle in our territory equally as advantageously as they can be handled at other points. When we come to consider the matter of community development and prosperity we certainly can never do anything with the differentials against us, such as have been imposed upon us in the past, and this, notwithstanding our great resources—the richness of which have made many of our people wealthy in spite of the handicap under which we have labored. It is our contention that if Congress will provide for a just and fair equality in railroad rates, that it will insure a much more healthful distribution of population, wealth, and industry than obtains at the present time and, therefore, greater nation-wide development, prosperity, and happiness for all of the people, and less stagnation, congestion, and poverty, because of concentrating all industrial and commercial activities at comparatively few rate-favored centers.

Mr. BARKLEY. If I understand your position correctly, you would not object to the higher rate per ton per mile for a shipment from Chicago, for example, to Reno, Nev., than would be charged from Chicago to San Francisco?

Mr. SHAUGHNESSY. That is my position; yes, sir. In other words, that means that blanket rates might be established covering this exceedingly long-haul traffic, providing it is uniformly applied, and without discrimination.

Mr. BARKLEY. But you do object to an adjustment of the rate that gives San Francisco an aggregate cheaper rate than Reno, Nev.; and that is on the ground, of course, that if the rate from Chicago to San Francisco is a reasonable rate, the one to Reno is an unreasonable one; it is too high?

Mr. SHAUGHNESSY. Yes, sir; if the rate is measured on the cost of performing the service in proportion to the distance traversed, that is true.

Mr. BARKLEY. If the rate to Reno is a reasonable rate, which would allow the railroads to declare a dividend, the rate to San Francisco is too low?

Mr. SHAUGHNESSY. Yes, sir.

Mr. BARKLEY (continuing). And that is making Reno pay the dividend that San Francisco ought to participate in the payment of?

Mr. SHAUGHNESSY. That is it exactly; you have got it very clearly.

The CHAIRMAN. The first part of the act to regulate commerce as amended by the act of 1910, makes it unlawful, without exception, to charge more for a shorter than for a longer haul.

Mr. SHAUGHNESSY. Yes; it does.

The CHAIRMAN. The first "proviso" of that section, however, reads as follows:

Providing, however, That upon application to the Interstate Commerce Commission, such common carriers may, in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

Now, in order for the carrier to have the right to do such a thing, it is a preliminary condition, or a condition precedent, that he must make a special case before the commission, upon application, and be authorized by the commission to make the difference in the charge, and specify what it is.

I would like to ask you if you know whether any applications of that kind have been filed and acted on by the Interstate Commerce Commission since the passage of that Act?

Mr. SHAUGHNESSY. Yes; a very great many.

The CHAIRMAN. I do not mean under the second proviso, but under that one where the railroads are asking for permission to establish a discriminatory rate—to begin it, in other words?

The next proviso is what I think you may have in mind. The second proviso is—

That no rates or charges lawfully existing at the time of the passage of this amendatory act shall require to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.

That proviso made all discriminating rates or charges that were not unlawful at the time—it made them lawful temporarily?

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. That is, for six months.

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. And thereafter, until the completion of an examination and determination by the commission?

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. I understand that the railroads practically filed applications in all cases before the six months expired; is that correct?

Mr. SHAUGHNESSY. They certainly did in all cases where there was long and short rates, and there were some new applications.

The CHAIRMAN. And I understand that there was a long time that elapsed in which the commission had been making the investigation to determine whether or not the railroads had been violating the act, and that is what has been the complaint; but I did not know, until you just stated it, that very many original applications—that is, applications to establish the discriminatory rate, where prior thereto it had not existed—had been made. Now, you say that there have been a number of those applications?

Mr. SHAUGHNESSY. Well, I understand there are some, but I do not know how many.

The CHAIRMAN. Well, I did not know of a single one of those cases.

Mr. LYON. If Mr. Shaughnessy will excuse me, I would like to say at this point, Mr. Chairman, that there have been many applica-

tions, growing out of the second proviso, to enlarge discrimination made under the first proviso. There are thousands of applications under this proviso.

The CHAIRMAN. Then the applications that you refer to are to permit the railroads to charge a discriminatory rate or a less rate for a longer than for a shorter haul, where they had not theretofore been making such charge?

Mr. LYON. Yes, sir.

The CHAIRMAN. Or to increase them, where the second provision of the proviso applies?

Mr. LYON. Yes, sir.

I will say that my name is Frank Lyon; I will speak before the committee later on behalf of the water lines.

Under the amendment of 1910, in the transcontinental cases, the carriers put in an application under the second proviso, section 4, of the act; and the Interstate Commerce Commission passed upon that; the matter went to the Supreme Court of the United States, and this law was held constitutional by the Supreme Court.

Then, when the Panama Canal was opened, and the water lines commenced using the Panama Canal, the transcontinental railroads came before the Interstate Commerce Commission and said that the steamships going between the Atlantic and the Pacific Ocean were handling so much traffic by way of the Panama Canal that it was necessary for the transcontinental railroads to ask the Interstate Commerce Commission to allow the railroads the rates on the commodities being handled by the water lines; and the commission passed an order permitting a departure from the fourth section of the act, as to some two hundred-odd commodities, known as schedule C commodities, in the transcontinental case.

The CHAIRMAN. Those applications were all under the first provision of section 4?

Mr. LYON. They were all under the first proviso of that section. And there are any number of applications—I speak without having the definite details at hand—they are constantly coming up, because until this war came on the water competition was increasing and becoming more effective at one point than another, and, of course, the carriers applied for relief from that; that is what the proviso is for, as I understand.

The CHAIRMAN. That is, the first proviso?

Mr. LYON. Yes, sir.

The CHAIRMAN. Are any of the applications made within the six months, as provided in the second proviso, still pending undetermined?

Mr. LYON. I understand that there are numerous applications of that kind pending.

The CHAIRMAN. Then they have been pending practically for years, have they?

Mr. LYON. Yes, sir. I speak without knowledge as to the details, but I heard Interstate Commerce Commissioner Clark say before the Senate committee last week that most of the applications filed under the second proviso of section 4 had been put behind the commission, and only some thousand of them were in front of the commission. I think that is the way he expressed it.

The CHAIRMAN. There are tens of thousands of applications, as I understand.

Mr. LYON. The applications may be expressed in thousands, but the violations would have to be expressed in millions; they are infinite in number.

The CHAIRMAN. I am speaking of the applications.

Mr. LYON. Yes, sir.

The CHAIRMAN. What I would like to get at is, about how many applications are pending and undetermined under the first proviso of section 4 of the act and how many are pending and undetermined under the second proviso. I suppose I can get that information from the commission.

Mr. LYON. Yes; the commission can give you that information.

Mr. MANN. I do not think that the chairman clearly understood the distinction you made in answer to his question; that is, whether there were any applications filed under this section to make new departures from the fourth section of the act which did not exist on June 18, 1910, when this amended section of the act went into effect.

As far as this western situation is concerned, I do not know of a single one that was in existence prior to March 15 last that is new and was not in existence prior to 1910.

The CHAIRMAN. Well, that was exactly what I was trying to find out, whether there were any original applications, or applications under the first proviso of section 4, to establish a discriminatory rate where it had never existed prior thereto.

Mr. MANN. Yes. On the other hand, as Commissioner Clark stated before the Senate committee—and I hope he will make some statement before this committee in that regard—a great many of these applications so filed were denied, and a great many others were voluntarily removed by the carriers after the passage of that amendment.

The CHAIRMAN. That is, after the enactment of the existing law?

Mr. MANN. Yes, sir.

The CHAIRMAN. I mean those that existed at the time the act was passed?

Mr. MANN. Yes, sir.

The CHAIRMAN. A great many of those were removed by act of the railroads, and others were terminated by act of the commission, and then these applications that the gentleman just referred to, growing out of the opening of the Panama Canal, were applications to increase what already existed in the way of discriminating rates?

Mr. MANN. Yes, sir.

Mr. LYON. That is what I call a new application.

The CHAIRMAN. But not an application under the first proviso of section 4?

Mr. LYON. I understand it is an application under the first proviso.

The CHAIRMAN. Well, I mean by reason of increasing the rate over and above the rate that existed at the time?

Mr. LYON. I will give an illustration: The railroads, we will say, have charged a rate of \$1 between the Atlantic and the Pacific coasts. They then come and say, "We want a rate of 75 cents on this." Now, I say that that is an application that has to do with the first proviso of section 4, and has nothing to do with the second proviso.

The CHAIRMAN. Well, was it or not an "offender," so to speak, when the law went into effect in 1910?

Mr. LYON. In most of these commodities they were charging less in 1910, as an offender, as you call it. I can not speak of that with authority, but Mr. Scandritt says it is true that they were violating the law, but they had to make a new application to the commission.

The CHAIRMAN. In other words, to violate it in a little higher degree?

Mr. LYON. Yes; in a little higher degree. But still I believe those to be specific cases under the first proviso, and that they have nothing to do with the second proviso.

The CHAIRMAN. In other words, it is held to be a special case, and the first proviso applies to it, and they must apply under the first proviso for relief?

Mr. LYON. Yes, sir.

The CHAIRMAN. In other words, in order to increase the discrimination they already had when the act was passed, they must make an original application, and they would be violating the law, unless that application was granted by the commission?

Mr. LYON. Yes, sir.

The CHAIRMAN. But they are not violators under the second proviso, provided they have made an application during the six months specified in that proviso?

Mr. LYON. Yes, sir; that is correct.

The CHAIRMAN. That is, they are not subject to a penalty.

Mr. LYON. But I understand in this particular case—and I think it has always been so understood—that the carriers have made numerous applications under the first proviso of the section, in cases where they have never operated before, and upon commodities where they have never operated before. Now, that information I have not in detail. But these questions are constantly arising; competition is constantly arising; and the railroad carriers, in order to meet competition, have to make special application to the commission.

The CHAIRMAN. Of course, if this bill is passed, H. R. 9928, it will virtually repeal both provisos of section 4?

Mr. LYON. Yes; that is the object of it, as I understand. Because the gentleman who spoke a few moments ago said—and I largely concur with him—that the amendment of 1910 has accomplished no good purpose—in its administration.

The CHAIRMAN. Has accomplished no good purpose in its effect?

Mr. MANN. From which I disagree; and I rest my opinion upon the statement of Interstate Commerce Commissioner Clark before the Senate committee, to the effect that a great many of the departures under the fourth section of the act have been withdrawn by the Interstate Commerce Commission.

Mr. SHAUGHNESSY. We have made that concession, Mr. Mann, that the Interstate Commerce Commission has required the carriers to withdraw a number of fourth-section departures.

Mr. MANN. Thank you.

The CHAIRMAN. Mr. Shaughnessy, I regret to have interrupted you; but I wanted to get those points clear before the proceedings continued.

Mr. SHAUGHNESSY. Mr. Chairman, I was glad to have you do that and to have had the benefit of the points you developed.

The CHAIRMAN. You may proceed with your statement.

Representative HARDY. Mr. Chairman, I would like to make a brief statement to the committee, at its convenience, either now or at some other time.

The CHAIRMAN. Do you mean on this bill?

Mr. HARDY. Yes, sir.

The CHAIRMAN. You have permission to do so, Judge Hardy; but these gentlemen have come here from a long distance, and we would like to accommodate them by hearing them now.

Mr. HARDY. That will be satisfactory to me, if I can be heard before the hearings end.

The CHAIRMAN. You will be given that opportunity. Do you wish to speak in behalf of the bill, or against it?

Mr. HARDY. I am in favor of the bill, as I understand it, which is to cut out all discriminations.

The CHAIRMAN. All right, Judge Hardy, we will be glad to hear you at any time at your convenience. These gentlemen have come here from the Pacific coast.

Mr. HARDY. I do not want to make any misstatement; but this is a matter I have been interested in for 10 years.

Mr. DEWALT. Mr. Chairman, may I ask a question of Mr. Shaughnessy?

The CHAIRMAN. Have you finished your preliminary statement, Mr. Shaughnessy?

Mr. SHAUGHNESSY. Yes, Mr. Chairman; I will close and call other witnesses.

Mr. DEWALT (interposing). For my own information, Mr. Shaughnessy, I would like to ask this: The complaints that you seem to utter and voice are from the western section of the country, are they not?

Mr. SHAUGHNESSY. The complaints that I am voicing here come largely from the Western and Southern States—all of that territory south of the Potomac, Ohio, and Missouri Rivers and that west of the Rocky Mountains.

Mr. DEWALT. Well, would that same complaint be relevant to eastern shippers as well as to the West?

Mr. SHAUGHNESSY. Do you refer to the traffic moving in the reverse direction—eastbound instead of westbound?

Mr. DEWALT. Yes.

Mr. SAUGHNESSY. Well, in that connection, it has never been the policy of the carriers, although the competition between the two oceans is just as strong in one direction, or in the past has been just as strong in one direction, as in the other, yet it never has been the policy of the carriers to charge more for the shorter eastbound haul to the interior of Indiana or Ohio or New York than to the port of New York, for example. Does that answer your query?

Mr. DEWALT. Partially; yes. I wanted to know whether the rule worked only one way or whether it worked both ways.

Mr. SHAUGHNESSY. In the past it has been working largely in only one direction, and that has been on westbound transcontinental business.

Mr. DEWALT. Mr. Winslow is from Massachusetts, and I understand is pretty largely interested in manufacturing institutions—not personally, but as a Congressman. I come from Pennsylvania

and represent a district which has very large manufacturing industries which are shipped westbound, and I was trying to find out whether the railroads made that discrimination westbound as well as eastbound?

The CHAIRMAN. No; westbound, going from the Atlantic coast.

Mr. DEWALT. Yes; westbound, going from the Atlantic coast.

Mr. SHAUGHNESSY. All points intermediate to the Pacific coast terminals west of Denver have been made to suffer discrimination on westbound transcontinental traffic, but points intermediate to the Atlantic coast have never had to suffer discrimination on eastbound traffic, although the ocean competition has been just as forceful in one direction as the other; and while there is some long-and-short haul discrimination on eastbound traffic (wool, for example), it is assessed against the producers in our country, therefore we are penalized by this long-and-short-haul discrimination both going and coming.

Mr. DEWALT (interposing). I wish you would elucidate that thought a little. I wish you would do that when you get to that point.

Mr. SHAUGHNESSY. I will be very glad to do so. Incidentally, I may state that I have quite fully elucidated this situation in my testimony before the Senate committee, which will be introduced and made part of the record here. I am so crowded for time that I will not be able to go into the matter extensively at this time, and I therefore request that you give consideration to the exhibit, which I put in evidence, covering the mileage from eastern-defined territory to the Pacific coast and Reno, and to my analysis of the rates covering the movement of structural steel from Pittsburgh, Chicago, and Pueblo to San Francisco, as compared to Reno and other intermountain points. This very clearly illustrates the character and extent of the discrimination, including its fluctuation and increase from time to time, as authorized by the Interstate Commerce Commission, since the amendment of the fourth section in 1910. I will refer briefly, at this time, to the rates covering the movement of structural steel in carload quantities, 60,000 pounds—

The CHAIRMAN (interposing). From the East to the West.

Mr. SHAUGHNESSY. From the East to the West; yes, sir. From Pittsburgh, for example. When we began our cases before the Interstate Commerce Commission in 1908, the terminal rate on structural steel from Pittsburgh to San Francisco—we call it the "terminal rate" as distinguished from the aggregate rate at the intermediate points—

The CHAIRMAN. The port rate?

Mr. SHAUGHNESSY. Yes, sir; because it goes to an "ocean port of call." When our complaints were filed in 1908 the "terminal rate" was \$15 per ton, whereas to Reno, Nev., and other intermediate points on the same line and in the same direction—in Arizona, Idaho, eastern Oregon, and Washington—it was \$26.80 per ton, or a differential or discrimination against the intermediate points amounting to 78 per cent. That was the extent of the back-haul charges at that time.

The CHAIRMAN. Going over the same line of railroad?

Mr. SHAUGHNESSY. Yes, sir; going over the same line of railroad and in the same direction. The Interstate Commerce Commission made an order in the Intermountain Rate cases by which it reduced

the class rates in 1910 and removed practically all discriminations in these rates; but no action was taken as to the carload commodity rates. About this time the fourth section of the act to regulate commerce was amended, and under this section, as amended, the commission consolidated all the Intermountain Rate cases and made an order as to the carload commodity rates on June 22, 1911, and prescribed the extent of the differential which might be assessed against the intermediate points. As illustrative of the action taken, the rate of \$26.80 per ton covering the movement of structural steel from Pittsburgh to Reno in 1908 was ordered reduced to \$18.40, as compared to the terminal rate at the Pacific coast, which had been made \$16 per ton, leaving a differential of 15 per cent against us. In other words, the differential had been reduced from 78 per cent to 15 per cent by this order. Now, that would have been fairly satisfactory at that time, but we never secured the benefit of it. On the contrary, the railroads carried the order into the courts, where it remained three years before reaching final decision by the United States Supreme Court.

Mr. DEWALT. That answers the question directly. That is a concrete instance of what I was trying to get at.

Mr. SHAUGHNESSY. Do you wish further information along this line?

The CHAIRMAN. Now, can you illustrate the carload instance that was brought out by the gentleman from Spokane, Wash., I think it was, or more probably, it was Seattle, showing how much a carload it was on iron, steel, or farm implements from the eastern section of the country to Seattle, as compared to what it was to Spokane and other intermediate points of the same line and in the same direction? Will you bring that out more fully?

Mr. SHAUGHNESSY. Yes, sir; I will be glad to.

Mr. DEWALT. Will you permit an interruption, Mr. Chairman, before he gets to that? You say, Mr. Shaughnessy, that you never got the benefit of that order of the commission?

Mr. SHAUGHNESSY. No, sir; we did not get the benefit of it.

Mr. DEWALT. Is there any reason that you have in mind why you did not get the benefit of it?

Mr. SHAUGHNESSY. There is certainly no good reason why we did not. After waiting from the passage of the amendment in 1910 until June 22, 1914, when the Supreme Court finally decided that the order in question was valid, there was certainly no good reason why we should not have secured the benefit of those rates. But our Pacific coast friends and the representatives of the Atlantic coast cities and of practically every manufacturing or industrial concern within the territory east of the Missouri River and north of the Ohio and Potomac Rivers joined with the carriers in an application before the Interstate Commerce Commission for authority to set the order aside and to grant the carriers very much greater relief from the fourth section than had been authorized and sustained by the United States Supreme Court, on the ground that the Panama Canal had been opened, and the contention was made that the carriers were confronted with a largely increased competition as a result of the opening of the Panama Canal, which, for a very short period of time, of course, was true. Everybody that had an old boat along the Atlantic coast had heard about the Panama Canal, and they rushed into that

service. A great many of them went out to the Pacific coast with their initial load, and some of them went bankrupt out there because they could not get a return load, while others came back in ballast; and they kept dropping out one by one until there were only two steamship lines that remained in the traffic—the American-Hawaiian Steamship Co. and the Luckenbach Steamship Co.—so that in a very short time the water competition was killed or reduced to what might be called normal; in other words, what it was before the Panama Canal was opened, speaking relatively, and having in view the increase which took place in the rail tonnage.

Now, then, the Interstate Commerce Commission, instead of protecting us and giving us the rates which were granted by their 1911 order and which would have reduced our differential throughout the intermountain territory to 15 per cent as compared with the original 78 per cent, made another order on January 29, 1915, and thereafter, further orders in response to the applications of the railroads and their allies in 1915 and 1916, which authorized very heavy reductions in the rates to the Pacific coast terminals upon the heavy moving carload traffic from the East. The effect of these orders, taking structural steel as illustrated by the rate from Pittsburgh to San Francisco, which was reduced from \$16 to \$13 per ton, while our rate was increased from \$18.40, as originally ordered, to \$20 per ton, was to increase the discrimination against us from 15 per cent to 54 per cent. In other words—and this answers the chairman's request to illustrate the discrimination by a comparison of the carload charges—on a 30-ton car of structural steel from Pittsburgh to San Francisco, passing through Reno, the charges would be \$390 per car, but if, while en route, over the same line, in the same direction and in fact in the same train, the shipment was ordered diverted and was dropped off at Reno, the charges collected would be \$600 per car. Now, briefly, that illustrates the situation on the Pittsburgh traffic, but as will be noted in my testimony here and before the Senate committee the discrimination authorized was very much greater from Chicago and Pueblo to Reno.

Mr. DEWALT. Can you give a concrete instance of the Eastern States, say Massachusetts or Rhode Island, involving shipments from there?

Mr. SHAUGHNESSY. From the New England States?

Mr. DEWALT. Yes; say, cotton goods, for example.

Mr. SHAUGHNESSY. On cotton piece goods from New England States, whereas the rate to the Pacific coast terminals was \$20 per ton or \$400 per car for a 20-ton load, the rate to Reno and other intermountain points was \$25 per ton or \$500 per car.

Mr. SANDERS. I would like to ask Mr. Shaughnessy one question.

Mr. SHAUGHNESSY. Yes, sir.

Mr. SANDERS. I notice that you appear here as representing the Railroad Commission of Texas.

Mr. SHAUGHNESSY. Yes, sir.

Mr. SANDERS. The Railroad Commission of Mississippi?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SANDERS. I am from Louisiana; and I want to know why Louisiana is not represented here. If you know of any reason why it is not represented in that connection, I would like to know what it is.

Mr. SHAUGHNESSY. I am sure I do not know. We sent out notices to all the railroad commissions, and some have responded and some have not, and I have not been advised yet as to what the Louisiana Railroad Commission's position is.

Mr. SANDERS. Well, I do not know; and I asked you, thinking you might know.

Mr. SHAUGHNESSY. No; I do not know. Possibly they may have taken the other side of the question in the Shreveport case in the proceeding they brought for the removal of the Dallas-Fort Worth discrimination.

Mr. SANDERS. I know all about that. That was inaugurated while I was governor; that was the Shreveport Rate case; I brought that case up.

Mr. SHAUGHNESSY. Yes.

Mr. SANDERS. What I wanted to know from you was, if you knew why Louisiana was not represented in this hearing, when Texas on the west and Mississippi on the east are represented. Is it because of water transportation?

Mr. SHAUGHNESSY. Well, Louisiana has some water transportation. By reason of your Red River you have a medium for the promotion of water transportation; I do not know how much you have been able to accomplish in that direction. And also, of course, you have a medium for the promotion of water transportation on the Mississippi River.

Mr. SANDERS. Well, we have 64 counties in the State, and 60 of them are supplied with water transportation; so that we are pretty well supplied.

Mr. SHAUGHNESSY. I suppose you have the water transportation agencies and get water-rail rates in Louisiana.

Mr. SANDERS. Well, I think we get the water rate in most of our places.

Mr. SHAUGHNESSY. Yes; you do get the water rate in many of your towns; that is true.

Mr. SANDERS. And that water rate has been used by the railroads, not only in Louisiana but wherever else they could use it, to drive all water craft off of the navigable streams.

Mr. SHAUGHNESSY. That is the point that we make.

Mr. SANDERS. I want to ask you just this one question about the discrimination by the railroads against interior points: Does it not amount simply to this, in the long run? That, as long as that is the policy of the railroads, we can not look for any water transportation?

Mr. SHAUGHNESSY. Absolutely.

Mr. SANDERS. Is that not the fact?

Mr. SHAUGHNESSY. Yes, sir. My testimony before the Senate committee, which will be made a part of the record here, covers that question in detail, and shows why that is true; and I will say that that is absolutely the fact.

Mr. SANDERS. And the situation in Louisiana is that, on account of the discriminatory rate established by what we call the water rate, the railroads have made rates which drive all water transportation off of our rivers?

Mr. SHAUGHNESSY. That is very true, sir.

Mr. SANDERS. Is that a beneficial policy, in your judgment?

Mr. SHAUGHNESSY. It is a very unwise policy; it is one which the Government of this country should not foster any longer and should not permit, and we earnestly request Congress to change it by passing the Hayden bill, H. R. 9928.

Mr. DECKER. Will you explain that to me, if you please, about the water competition?

Mr. SHAUGHNESSY. I will be glad to, Mr. Decker, but I wish to explain that we have several witnesses to be heard and as we are only allowed one day, under the chairman's ruling, I must arrange to close at this time and call other witnesses. Mr. Frank Lyon will testify later on in behalf of the Luckenback Steamship Co., and he will illustrate the water competition very fully for the information of the committee.

Mr. DECKER. Alright; that will be satisfactory.

Mr. DEWALT. Are there any of these associations represented by local counsel in Washington?

Mr. SHAUGHNESSY. Yes, sir; the State of Washington is represented by Mr. J. B. Campbell, of Spokane.

Mr. DEWALT. No, not the State of Washington; I mean represented in Washington, D. C. For instance, take the State of Texas, are they represented here?

Mr. SHAUGHNESSY. They have no permanent representative in Washington, if that is what you mean, but they are represented here at this hearing by Mr. Allison Mayfield, chairman of the Texas Railroad Commission.

Mr. DOREMUS. Mr. Dewalt may not understand. This gentleman, Mr. Shaughnessy, is a member of a railroad commission himself.

Mr. SHAUGHNESSY. I was a member of the Nevada Railroad Commission, and Mr. Allison Mayfield is chairman of the Texas Railroad Commission; Mr. F. A. Jones, for the Arizona Railroad Commission; Mr. A. S. Freehafer, for the Idaho Railroad Commission; Mr. H. F. Bartine, for the Nevada Railroad Commission; Mr. W. S. McCarthy, for the Utah Traffic Bureau and its State railroad commission; and Mr. J. B. Campbell, attorney and representative for the city of Spokane and eastern Washington, will participate in this hearing in support of the bill here under consideration if opportunity is afforded them to be heard within the time allowed. I want to say, however, that it is going to be physically impossible for us to complete our side of the case and do justice to it if we are to be limited to one day only.

Mr. ESCH. The State railroad commissioners have what they call a war committee, of which Mr. Elmquist, formerly of the Minnesota Railroad Commission, is chairman.

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. Is he authorized to appear in behalf of this legislation?

Mr. SHAUGHNESSY. No, sir; Mr. Elmquist is our representative of the National Association of Railway Commissioners, to which all of the various State railroad commissions subscribe and are members, and in that behalf the committee of which Mr. Elmquist is the chairman is in Washington looking after railroad appraisal matters. He is appearing before the Federal tribunal at all times, representing the various States on the question of the physical valuation of the railroads. Aside from that, I do not think he is taking any active interest, other than as authorized from time to time by the different commissions to represent them.

In closing I wish to give a reference to my testimony before the Senate committee and ask that it be incorporated in this record.

The CHAIRMAN. Anything that you wish to incorporate may be included in your statement.

Mr. SHAUGHNESSY. And I ask at this time that the testimony of Mr. F. A. Jones, chairman of the Arizona Railroad Commission, who is unexpectedly called home, be incorporated also; and also the testimony of Mr. J. B. Campbell, of the Spokane Chamber of Commerce, who has been called to Rochester, Minn., to be present with his wife during a capital operation. I ask that his testimony be incorporated in the record at this point, and I am sure that the members of the committee will find it very illuminating.

The CHAIRMAN. The testimony of those gentlemen will be included in the record, if you will furnish it.

Mr. SHAUGHNESSY. In closing, Mr. Chairman, I wish to give reference to and ask to have incorporated as a part of my remarks, the able statement of Hon. Franklin K. Lane, in the intermountain rate cases, decided June 22, 1911, immediately after the passage of the fourth section of the act in its present state. It is reported in 21 I. C. C., from page 364 to page 369.

And I ask the gentlemen of the committee to read this with great care, because it very clearly illustrates and supports our side of this question, perhaps, stronger than any language we could put it in; and it also has the force of being an official opinion of the Interstate Commerce Commission.

The CHAIRMAN. You may insert that in your remarks.

Mr. DOREMUS. I came in late, Mr. Shaughnessy, and did not hear all your statement. Have you testified this morning as to the effect of the opening of the Panama Canal upon coast-to-coast rates?

Mr. SHAUGHNESSY. Yes; I have, Mr. Doremus.

The CHAIRMAN. Yes; and we are also going to incorporate his testimony given before the Senate committee on the same subject.

(Thereupon, at 12.15 o'clock p. m., the committee took a recess until 2 o'clock p. m.)

(The following material was subsequently submitted by Mr. Shaughnessy, and is here printed in full, as follows:)

INDUSTRIAL MOVEMENT WESTWARD.

Whatever the reason, the fact stands forth throughout this record that the source of supply upon which the far western communities largely draw their manufactures has within half a century moved westward from the Atlantic seaboard, so that, as was found by the railroad commission of Nevada from an analysis of the billing of actual shipments into Reno, 75 per cent of their traffic coming from the east originated no farther east than the longitude of Chicago. There are cotton mills as far west as Kansas City; mining, milling, and farming machinery is produced more largely in and about Chicago than in any other section of the country; boots and shoes, hats and clothes, cooking utensils, and the multitudinous articles of domestic use may be secured in large part without coming east of the Alleghenies; in fact, the center of those industries which supply the far west apparently is not far removed from the center of population of the country. This is a pregnant fact. It was announced by the Santa Fe officials, when they opened their through line from Chicago to Los Angeles that they thought it the part of wisdom to make their rates lower or as low from Chicago than from New York, so that the industries of the middle west might develop. They would make their line independent of their eastern connections in so far as that was possible, and instead of bidding against the shippers of the seaboard for traffic destined to the Pacific coast they would develop industries close to their own eastern terminus which would

supply the western demand, and thereby develop a traffic for the lines west of Chicago which need not be divided with the carriers east of that city—an exclusive traffic, one which could be carried at rates more compensatory than any that could be had out of the division of a through coast-to-coast rate.

This policy was determined upon by the carriers running west from Chicago 25 years ago. From the date of the first transcontinental tariff that we have upon the files of the commission Chicago has never paid a higher rate to reach a Pacific coast terminal than has New York, either upon classes or commodities. The water competition of the seaboard has never been strong enough since 1887 to compel a reduction of rates from New York which the lines out of Chicago did not feel fully justified in meeting at that point. And, be it noted, at the time that this policy was begun there was no water competition between the coasts save by an occasional tramp boat and such other ships as the railroads themselves positively and admittedly controlled. It would not be claimed that this policy was the sole cause of the steady march of industry to the westward during the past quarter of a century. Nevertheless we find the fact that there is now hardly a need which the people of the far west have that can not be supplied from territory nearly 1,000 miles nearer to them than was their source of supply 25 or 30 years ago. Rates that were introduced then purely for market competitive reasons may be to-day reasonable in themselves. So, too, rates then established from Chicago to meet conditions at San Francisco, a competitive terminal, and justifiably made lower to that more distant point than to intermediate points, may in the course of years have become by reason of increased volume of traffic, growth of population, and new methods of operation so reasonable as to make the imposition of higher rates at intermediate points unjustifiable. We see strong suggestion of this in Mr. Morton's testimony given 10 years ago when none of these carriers was carrying nearly so large a traffic or operating so economically as they are to-day, when the intermediate territory had not yet been exploited as it is now, when dry farming was unknown, and the irrigation of the desert through the aid of the Government no more than a statesman's dream.

AN ARTIFICIAL ADJUSTMENT.

It is not provable, but there is much reason to support the statement that if all the producing territory—the fruit and vegetable growing, mining, and lumbering territory—which does not receive the benefit of terminal rates, and which is compelled to pay the rate to the coast plus the rate back upon its commodities of eastern production, were taken from the transcontinental carriers they would be on the verge of bankruptcy in but a short time. Surely a railroad policy adapted to the conditions of one day may properly change with the conditions of another, and in the very nature of things it must be apparent that the transcontinental carriers can not continue forever charging higher rates to the intermountain country than to the coast from the Middle West. The condition is too artificial to last. The carriers have taken from San Francisco in large part the advantage that she should enjoy from her situation upon the ocean by throwing around her a circle of terminal points 100 miles or so inland. By doing this they have forced water carriers to meet rail competition at these interior places, and yet the railroads urge that the rates are made to meet ocean-to-ocean competition. In the East they have stretched the blanker from Portland, Me., to Denver, Colo., a distance farther than from Antwerp to Moscow, but they refuse to admit that from any point along this long line it would be justifiable to make the rates given to the coast terminals applicable to Reno.

Furthermore, we find that this situation is artificial in that it has been brought about by a procession of agreements between carriers. Each carrier has been appeased by giving to it something which would cause it to be satisfied with the arrangement. The carriers have competed with each other across a table until their minds agreed upon a condition that would prevent rate wars. It is wholesome and beneficial that the body politic should not be disturbed by rapid fluctuations in rates of transportation which tend to destroy the stability of commerce and imperil the fortunes invested in such transportation facilities. If society does not undertake to regulate the methods by which a natural monopoly such as a railroad may be profitably conducted it is not to be expected that such a monopoly will not seek to protect itself, even at the disadvantage of the public it serves. The results of such self-protective measures, however, must be such as neither to offend the law nor be opposed to the development of the country and the instinct of its people for fair play.

If now we have apprehended aright the intent of Congress there comes before us upon an application for permission to deviate from the prohibitive clause of the fourth section the inclusive question whether by such deviation any provision of the act will be violated, and the burden rests upon the carrier to satisfy our minds that no such result would be effected by the granting of such permission—that no injustice will be done to the intermediate point with relation to the more distant point. As already said, the purpose of the statute which we are required to enforce is, succinctly stated, to preserve harmony between communities, individuals, and carriers, to allay discord, and prevent, so far as may be, oppression and injustice. The unhampered exercise of a railroad policy may make for the material benefit of the carrier—at least for its immediate profit—but work a wrong with which the public must concern itself. To be concrete, it may be (although this fact has not been established) that it is to the financial interest of the transcontinental carriers to make the same rates from the Missouri River as from Chicago, Pittsburgh, and New York to the coast cities which lie on or near the ocean's edge, and compel the intermediate points to base their rates upon these coast terminals; but this decision on their part is certainly subject to review, and when Congress says that this commission "may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section," it means to lodge with this body, if it means anything at all, the power to pass in judgment upon the effect of a railroad policy which departs from the intentment of the law. A community is entitled to something more than a reasonable rate; it is entitled to a nondiscriminatory rate. A carrier may not say, "We will give to this community a reasonable rate" and meet the full requirement of the law; it must view its rates as a whole and see to it that they effect no advantage or preference to one community over another which does not arise necessarily out of the transportation advantages which the one has over the other.

MARKET COMPETITION.

Ocean competition, say the carriers, brings about the lower rates from coast to coast; market competition produces the lower rates from the interior to the coast. We have considered ocean competition and see how real was its effect and how the carriers dealt with it. "Market competition" is a phrase with which the railroad traffic manager too often conjures. When no other force can be found which brings about a discrimination, market competition is advanced. It is both a sword and a shield; it is used to protect the carrier against attack because of undue discrimination as between communities, and it is a weapon of offense as well, by which one carrier invades the territory of another upon a different base from that which it grants to its own immediately dependent communities and forces concessions from its rival carriers.

Market competition, as we have seen, is a euphemism for railroad policy. The history of the fourth section makes clear that it was born out of a desire, and has been amended out of the purpose, to restrict the force and effect of market competition. The examples cited before Congress by those who have advocated an absolute long-and-short-haul section have largely been such as arose out of railroad policy, not such as were developed by transportation competition. Congress, however, has not seen fit to say (and perhaps most wisely so) that this economic force shall not be allowed to have its play in the making of rates. Market competition must be considered as one of those circumstances affecting a rate situation with which we are called upon to deal. But may it not be said that while the language of the statute does not say that market competition shall not be allowed to justify the charging of the higher rate to the nearer point, the very spirit of the section makes against the free application of any such justifying principle? A national policy may veto a railroad policy just as a public need may overcome and set aside a private desire. Experience has demonstrated to the National Legislature that it is not safe to leave to the carriers the determination of the question what markets should be brought into competition with one another. The policy of Congress seems to be that a railroad may be compelled by transportation competition to make its rates lower than it otherwise would between two competitive points, and that this will justify a breach of the prohibition of the fourth section; but the desire of a number of shippers to reach a market is a force to which the carrier may not yield unless it can establish clearly that the adoption of such policy will not unfairly discriminate against one community and in favor of another and will not produce those results which the law was intended to destroy. Clearly to allow for market competition as a sole and controlling factor under the fourth section is to render it nugatory, for this would be tantamount to saying that a

railroad could justify every discrimination as between communities by the assertion of nothing more than its own determination of policy.

We must regard the proviso in the fourth section as subordinate to the preceding clause prohibiting the higher rate for the shorter haul, and to carry out this intent of the law a carrier must establish before this commission, in order to secure an order of exception thereunder, more than merely its own desire to haul a great volume of traffic between two distant points; it must prove that by such a policy it will not impose unreasonable rates upon any intermediate point, and that its policy will not work an injustice of which such intermediate point may fairly complain. Unless it does make such proof this commission is not justified under the law in excusing it from adopting its rates to the more distant point as the basis for rates to the nearer points.

In this case and under these applications the commission has given thought to many considerations not touched upon in this report, some of which are suggested by the tables to be found in the appendix (C—D) hereto. Such, for instance, as the reasonableness of the transcontinental rates upon commodities in and of themselves when applied from different points of origin and the relation of the cost of service over the Central Pacific when delivery is made at Reno or at San Francisco. And when we have considered the return per ton-mile yielded by many of these rates it is not remarkable that other carriers from the East have pressed forward, even to their own temporary financial embarrassment, to reach these coast terminals. No other carriers in this country enjoy such long hauls upon so great a volume of high-class traffic as do these transcontinental railroads. Their fine earnings are testimony to this effect, as well as to the competency of their management. If the principle that a railroad should charge what the traffic will bear is the criterion of railroad rates, no exception can be taken to the transcontinental situation, for it is masterfully designed to secure a maximum of revenue and yet develop such industries and benefit such communities as the railroad in its wisdom may wish to thrive, for the growth of the Pacific coast certainly is in no small part to be accredited to the discretion lodged in and exercised by the transcontinental traffic manager.

The coast cities—those that have direct access to the ocean—can not be materially injured by the policy of the law we have herein considered. They are rendered secure as entrepôts of commerce by the presence of the ocean, so long as they choose to avail themselves of its advantages. There is much reason in this record, too, for the belief that they have at times chosen to forego these advantages in the expectation that they would be made secure by the rail carriers of a large distributing market in the interior. With the introduction of a policy which removes from these interior points in some degree the disadvantage under which they have suffered with relation to eastern points of production it will become a matter of moment to the coast cities to avail themselves fully of the ocean as well as develop industries upon the Pacific coast itself which will compete with the industries of the East for the interior trade. That which has been done in the Middle West within a generation may certainly be accomplished upon the Pacific coast, so that there may come about a competition between real producing markets as well as competition between jobbing houses.

The carriers herein involved have not shown that undue discrimination was not effected by their rate adjustment between points in Nevada and points in California, nor have they established that the rates to the coast cities, if extended by them from eastern points outside the zone of water influence, are not fully compensated.

We desire to be extremely conservative in this the first application of the new law and to require an adjustment of rates that will be safely within the zone of our discretion. For this reason we have decided that the transcontinental carriers serving Reno and other points upon the main line of the Central Pacific shall make no higher charge upon any article carrying a commodity rate than is contemporaneously in effect from Missouri River points, such as Omaha and Kansas City, to coast terminal points. This principle we shall also expect to be applied on commodity rates to all main-line intermediate points in Nevada and California. Traffic originating at Chicago and in Chicago territory moving under commodity rates may have a rate seven (7) per cent higher than that imposed on freight originating in Chicago and Chicago territory and destined to the coast terminals. From Buffalo-Pittsburgh territory the rates to intermediate points may rise above those demanded and charged from the same points and territory to the coast terminals to the extent of fifteen (15) per cent, while from New York and trunk line territory the rates charged shall not exceed twenty-five (25) per cent over and above terminal rates. This means that Sulsum, Auburn, Truckee, Reno, and Elko, for instance,

points intermediate to San Francisco from the East, shall have at least the benefit of the commodity-rates extended from the Missouri River to Sacramento and San Francisco, and shall pay no more than seven (7) per cent above the Chicago-coast terminal rates, and correspondingly increases of fifteen (15) and twenty-five (25) per cent, respectively, from Pittsburgh and New York territories.

Mr. SHAUGHNESSY. From a reading of this opinion we believed the commission was preceding with "extreme conservatism" to ultimately remove all of the discrimination against us and to give force and effect to the fourth section as amended in 1910 (this being its first decision under the amended section), but as will clearly appear in my testimony, I will show how the Interstate Commerce Commission reversed the reasoning upon which this opinion was founded and very greatly increased the discrimination against us.

In response to Judge Sims's suggestion, I submit as part of my testimony, for the information of the committee, the final decisions of the Interstate Commerce Commission in the Intermountain Rate Cases, rendered June 30, 1917, and January 21, 1918:

Statement showing commodity rates to points taking "terminal rates" named in I. C. C. No. 1019, of R. H. Countiss, agent—Continued.

Commodity.	Item No.	Minimum C. L. weight.	From groups—					
			A	B	C	D	E	F
Paper and articles of paper:								
Adding machine, book, etc.	1580-B	40,000	100	100	100	100	100	-----
Bag and barrel linings.....	1594-B	40,000	90	90	90	90	90	-----
Book, cover, etc.	1596-B	40,000	90	90	90	90	90	-----
Book, news, poster, etc.	1598-B	40,000	85	85	85	85	85	-----
Boxes, pulpboard, etc.	1600-B	40,000	95	95	95	95	95	-----
Building, etc.	1602-C	40,000	85	85	85	85	85	-----
Roofing felt.....do.	1604-B	36,000	85	85	85	85	85	-----
Paper, wall, etc.	1606-A	40,000	100	100	100	100	100	-----
Strawboard.	1608-A	50,000	-----	-----	-----	65	65	65
Toilet paper and paper towels.	1608-B	26,000	100	100	100	100	100	-----
Wrapping, not printed.....	1610-B	40,000	90	90	90	90	90	-----
Wrapping, bags, fruit, etc.	1612-B	40,000	100	100	100	100	100	-----
Writing, etc.	1614-B	40,000	100	100	100	100	100	-----
Potassium and sodium, cyanide of.	1616-A	40,000	95	95	95	95	95	-----
Roofing, etc.	1618-B	40,000	90	90	90	90	90	-----
Sadiron.	1620-A	40,000	95	95	95	95	95	-----
Ship and boat spikes.....	1626-C	80,000	75	75	75	65	65	65
Soap, etc.	1630-C	40,000	90	90	90	90	90	-----
Soda ash, etc.	1638-A	40,000	-----	-----	-----	65	65	65
Soda, bicarbonate of, etc.	1640-A	50,000	85	85	85	85	85	-----
Starch and dextrine.....	1648-A	40,000	95	95	95	95	95	-----
Stoves, viz:								
Radiators and coils.....	1650-A	50,000	85	85	85	85	85	-----
Sectional boilers, etc.	1652-A	50,000	95	95	95	95	95	-----
Stovepipe iron.....	1654-A	50,000	85	85	85	85	85	-----
Tacks, iron, etc.	1656-A	50,000	85	85	85	85	85	-----
Tile.....	1662-A	40,000	90	90	90	90	90	-----
Tin cans, pails, or boxes.....	1664-B	24,000	100	100	100	100	100	-----
Tin andterne plate.....	1666-E	80,000	74	75	75	65	65	65
Twine and cordage.....	1668-A	40,000	85	85	85	85	85	-----
Wire fencing, etc.	1672-A	30,000	85	85	85	85	85	-----
Wire, insulated or covered.....	1680-A	50,000	85	85	85	85	85	-----
Wire rods.....	1682-C	80,000	75	75	75	65	65	65
Wire rope, etc.	1684-B	50,000	85	85	85	85	85	-----
Wire telephone or electric light cable.	1686-A	50,000	85	85	85	85	85	-----
Zinc (spelter).....	1688-A	40,000	85	85	85	75	75	-----
Rails (steel), etc.	1690-C	60,000	$\left\{ \begin{array}{l} 1,600 \\ 1,570 \end{array} \right.$	$\left\{ \begin{array}{l} 1,550 \\ 1,510 \end{array} \right.$	$\left\{ \begin{array}{l} 1,300 \\ 1,300 \end{array} \right.$	$\left\{ \begin{array}{l} 1,300 \\ 1,300 \end{array} \right.$	$\left\{ \begin{array}{l} 1,300 \\ 1,300 \end{array} \right.$	$\left\{ \begin{array}{l} 1,300 \\ 1,300 \end{array} \right.$
Rail fastenings.....	1692-C	60,000	77½	77½	77½	65	65	65

¹ Rates in cents per ton of 2,240 pounds.

² Applies only from specific points named in item.

Rule 11.—Cars to be loaded to full gallonage capacity.

ORDERS.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 30th day of June, A. D. 1917.

Fourth Section Order No. 6790.

In the matter of reopening Fourth Section Applications 205, 342, 343, 344, 349, 350, 352, and 10336, filed by R. H. Countiss, agent, for and on behalf of various transcontinental carriers for authority to continue lower rates on certain commodities from eastern defined territory to Pacific coast ports than the rates contemporaneously applicable on like traffic to intermediate points; and in the matter of reopening Fourth Section Applications 9813, 10110, 10126, 10155, 10186, and 10189, filed by R. H. Countiss, agent, for and on behalf of The Southern Pacific Company, Atlantic steamship lines, The Atchison, Topeka & Santa Fe Railway Company, and Mallory Steamship Company, respecting rates on barley, beans, canned goods, asphaltum, dried fruit, and wine from California ports to points on the Atlantic seaboard which are lower than the rates contemporaneously applicable from intermediate points.

Upon further consideration of the matters and things involved in the above-entitled case, a hearing having been held upon the applications involved, and full investigation of the matters and things involved therein having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That Fourth Section Orders Nos. 124, 5409, and orders supplementary thereto and all other orders heretofore entered in response to Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, 352, and 10336, authorizing carriers to maintain rates on commodities from eastern defined territory to Pacific coast ports lower than the rates contemporaneously applicable on like traffic to intermediate points, and Fourth Section Orders Nos. 4767, 5012, 5074, 5088, 5099, 5131, and orders supplementary thereto and all other orders entered in response to Fourth Section Applications Nos. 9813, 10110, 10126, 10155, 10186, and 10189, authorizing carriers to maintain rates on barley, beans, canned goods, asphaltum, dried fruit, and wine, from California ports to points on the Atlantic seaboard lower than the rates contemporaneously applicable on like traffic from or to intermediate points, be, and they are hereby, vacated effective October 15, 1917.

It is further ordered, That such portions of the applications above set forth as ask for authority to maintain rates on commodities from eastern defined territory to Pacific coast ports lower than the rates contemporaneously in effect on like traffic to intermediate points, be, and they are hereby, denied, effective October 15, 1917.

It is further ordered, That such of the applications above set forth as ask for authority to maintain rates on barley, beans, canned goods, asphaltum, dried fruits, and wine from California ports to points on the Atlantic seaboard lower than rates contemporaneously applicable from or to intermediate points be, and they are hereby, denied, effective October 15, 1917.

And it is further ordered, That tariffs containing rates revised in accordance with the provisions of this order shall be made effective on statutory notice.

No. 9258.

The Commercial Club of Kansas City, Mo.,

v.

The Atchison, Topeka & Santa Fe Railway Company et al.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

The following is the final decision of Interstate Commerce Commission in Intermountain Rate cases, submitted by J. F. Shaughnessy in long-and-short-haul hearing before the House Committee on Interstate Commerce March 25, 1918:

4900

INTERSTATE COMMERCE COMMISSION.

FIFTEENTH SECTION APPLICATION No. 324.¹

TRANSCONTINENTAL COMMODITY RATES.

Submitted December 20, 1917. Decided January 21, 1918.

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1. Authority to file increased carload commodity rates from eastern defined territories to Pacific coast and points intermediate thereto granted.
 2. Authority to cancel all less-than-carload commodity rates from eastern defined territories to Pacific coast and points intermediate thereto denied.

¹ This report also includes the disposition of Fifteenth Section Applications Nos. 1399, 1077, 1083, 1084, and 1822, and Fourth Section Applications Nos. 11149, 11150, 11178, 11186, 11187, 11196, and 11197.

3. Authority to file increased less-than-carload commodity rates from eastern defined territories to Pacific coast points not higher than the present rates on the same items to points intermediate to the Pacific coast granted.
4. Authority sought by the Southern Pacific Company via water-and-rail routes through Galveston to file proposed increased rates from its New York piers on items as to which it concurs in higher rates via all-rail routes to Pacific coast points denied.
5. Authority to file increased export commodity rates from eastern defined territories to Pacific coast ports applicable on traffic destined to points in Japan, Australia, New Zealand, Fiji Islands, the Philippine Islands, and Asiatic countries granted.
6. Authority to file increased import commodity rates from Pacific coast ports to points in eastern defined territories applicable on traffic from points in Japan, New Zealand, Australia, Fiji Islands, the Philippine Islands, and Asiatic countries granted.
7. Authority sought by rail-and-water lines through Galveston to increase rates on barley, beans, canned goods, asphaltum, dried fruits, and wine from Pacific coast ports in California to the Atlantic seaboard to the level of the all-rail rates on the same commodities granted.
8. Authority sought under the fourth section by the all-rail lines to meet via their routes the rates proposed by the Southern Pacific Company from and to New York via its route through Galveston to and from Pacific coast ports denied.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company; *H. A. Scandrett* for Union Pacific Railroad Company; *H. C. Burnett* for Lehigh Valley Railroad Company; *Charles Donnelly* for Northern Pacific Railway Company; and *F. H. Wood* for Southern Pacific Company.

J. B. Campbell for Spokane Merchants' Association; *James C. Lincoln* for Merchants Association of New York; *J. H. Lothrop* for Portland Traffic & Transportation Association; *P. W. Coyle* for St. Louis Chamber of Commerce; *R. D. Sangster* for Chamber of Commerce, Kansas City, Mo.; *H. C. Barlow* for Chicago Association of Commerce; *S. J. Wettrick* for Seattle Chamber of Commerce; *Seth Mann* for San Francisco Chamber of Commerce; *A. T. Helping* for South Dakota Chamber of Commerce; *Jay W. McCune* for Traffic Bureau of Tacoma Commercial Club; *Edward M. Cousin* for Willamette Valley and Southern Oregon Shippers Association; *A. L. Freehover* and *Leonard Way* for Public Utilities Commission of Idaho; *George B. Groff* for Commercial Club of Boise, Idaho; and *W. S. McCarty*, *S. H. Love*, and *H. W. Prickett* for Traffic Bureau of Utah.

Frank Lyon for Luckenbach Steamship Company; *Forest Bramble* for Phelps Construction Company; *C. W. Belsterling* for American Bridge Company and others; *W. J. Price* for J. B. Williams Company; *Walter Engels* for Borden's Condensed Milk Company; *J. L. Roberts* for the Barrett Company; *E. R. Bockstedt* for Columbian Rope Company; *C. L. Hilleary* for F. W. Woolworth Company; and *C. S. Belsterling* and *J. F. Townsend* for National Tube Company.

Claude H. Reigart for Bethlehem Steel Company; *N. L. Moon* for Alan Wood Iron & Steel Company; *H. C. Crawford* for the Cambria Steel Company; *R. A. Van Kirk* for the Varnish Manufacturers Association and Paint Manufacturers Association; *J. W. Bomgardner* for John A. Roebling's Sons Company; *Wilmer M. Wood* for United States Cast Iron Pipe & Foundry Company and others; *Herbert Thompson* for Union Carbide Company and others; *A. L. Griffith* for American Can Company; *R. E. L. Bunch* for American Brake Shoe & Foundry Company; *Michael T. Curran* for American Stove Company; and *J. L. Power* for Simmons Hardware Company.

E. A. Leveille for Charles Emmerich & Company; *F. R. Levins* for Russ-Parker Company; *John J. Sinnott* for F. F. Dalley Company; *Bruce Terbush* for Stone-Ordean-Wells Company; *Charles F. Robb* for P. R. Mitchell Company; *R. L. Hearon* for Colorado Fuel & Iron Company; *C. G. Hylander* for William Wrigley, Jr., Company; *Martin Van Persyn* for Wholesale Grocers Exchange of Chicago and Sprague, Warner & Company; *Ed E. Rentz* for Globe-Wernicke Company and others; *E. K. Prichett* for Macey Company and others; and *A. T. Cobb* for Yawman & Erbe Manufacturing Company and others.

J. P. Curran for American Bottle Company; *C. D. Dooley* for Peet Brothers Manufacturing Company; *L. A. Clark* for Ball Brothers Manufacturing Company; *William T. Days* for Malinckrodt Commercial Works; *Bishop & Bahler* for Union Iron Works; *Charles Clifford* for Wholesale Plumbing Jobbers of San Francisco and others; *R. M. Fullerton* for Western Cedar Pole Preservers; *E. S. De Pass* for Carnation Milk Products Company; *C. W. Dejournette* for American Cream Tartar Company; *J. S. Jenks* for Fresno Cooperage Company; and *Geo. W. Webster* for Associated Cooperage Industries of America.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

In *Transcontinental Rates*, 46 I. C. C., 236, we found that existing water competition between the east and west coasts of the United States did not justify the maintenance by the rail carriers or water-and-rail carriers of lower rates on commodities from eastern defined territories to Pacific coast points than were contemporaneously maintained on like traffic to intermediate points.

We also found that the maintenance of lower rates via rail-and-water routes through Galveston on barley, beans, canned goods, asphaltum, dried fruits, and wine from California-Pacific coast ports to the Atlantic seaboard than on like traffic from or to intermediate points was not justified. Orders were entered requiring the car-

riers on or before October 15, 1917, to realign the commodity rates from eastern defined territories to Pacific coast and intermediate points, and the rates via rail-and-water routes through Galveston on the commodities above named from California ports to the Atlantic seaboard to accord with the long-and-short-haul rule of the fourth section of the act.

By amendment to section 15 of the act approved August 9, 1917, it is provided that until January 1, 1920, it shall be unlawful to file increased interstate rates without having first secured from the Commission approval thereof.

Under this requirement, the carriers filed on September 21, 1917, Fifteenth Section Application No. 324, and on October 22, 1917, Fifteenth Section Application No. 1399 requesting authority to file certain increased commodity rates from eastern defined territories to the Pacific coast, and, in some instances, to intermediate points. On November 16, 1917, Fifteenth Section Application No. 1822 was filed asking authority to file increased rates on barley, beans, canned goods, asphaltum, dried fruits, and wine from California ports to the Atlantic seaboard via rail-and-water routes through Galveston. By Fifteenth Section Applications Nos. 1077 and 1083, filed October 8, 1917, authority is sought to file increased export rates from various points in the United States to Pacific coast ports on traffic destined to points in Australia, New Zealand, Japan, China, the Philippine and Fiji Islands, and in specific instances to Central and South American and Mexican points. By Fifteenth Section Application No. 1084, filed October 8, 1917, authority is sought to file increased rates from Pacific coast ports to points in the United States and Canada applicable on traffic originating in Asia, Australia, and in specific instances in Central and South America, Mexico, and the Hawaiian Islands.

Hearings respecting the propriety of the proposed increases have been held at New York, N. Y., Chicago, Ill., Portland, Oreg., and Washington, D. C.

DOMESTIC RATES.

The domestic rates apply upon by far the greater amount of traffic and will be discussed first. Rates to California terminals and intermediate points are published in Trans-Continental Freight Bureau tariff 1-P, R. H. Countiss, agent's, I. C. C. No. 1036, hereinafter referred to as tariff 1-P, and the rates to the north coast terminals and intermediate points are published in Trans-Continental Freight Bureau tariff No. 4-N, R. H. Countiss, agent's, I. C. C. No. 1037, hereinafter referred to as tariff 4-N. Rates are stated in cents per 100 pounds. The rates on bottles from certain territories to points on or near the Pacific coast are under consideration in Investigation

and Suspension Docket No. 963. The rates here proposed on this commodity are shown in item 394 of tariff 1-P and 485-A of tariff 4-N. Nothing in this report or order must be construed as affecting the disposition we may subsequently make as to these rates in the suspension case above named. Commodity rates from eastern defined territories to Pacific coast and intermediate points are divided into three groups, designated as schedules A, B, and C, described in *Transcontinental Rates*, *supra*, page 249. The rates to the Pacific coast ports proposed on items included in schedule C are in all instances nearly the same as the rates now applicable to the highest rated intermediate points such as Spokane, Wash., Reno, Nev., and Phoenix, Ariz. The following-named items are representative of the articles, and the rates shown are representative of the present and proposed rates on items in tariff 1-P:

Item No.	Caption.	Groups.								
		A	B	C	D	E	F	G	H	I
1572	Wrought-iron pipe:									
	Present to terminals.....	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75
	Present to intermediates....	1.10	1.00	1.00	.90	.90	.75	.75	.75	.75
	Proposed to terminals.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
	Proposed to intermediates..	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
1636	Paints:									
	Present to terminals.....	.85	.85	.85	.85	.85	.85	.85	.85	.85
	Present to intermediates....	1.10	1.00	1.00	.90	.90	.85	.85	.85	.85
	Proposed to terminals.....	1.10	1.00	.95	.90	.90	.85	.85	.85	.85
	Proposed to intermediates..	1.10	1.00	.95	.90	.90	.85	.85	.85	.85

In those instances in which the present rates from group F to intermediate points are 75 cents, the proposed rates from points in group F to the terminals are 75 cents, and the proposed rates to both intermediate points and to the terminals from points in the more easterly groups are constructed by adding to the 75-cent rate from group F 10, 15, 20, 25, and 35 cents from points in groups E, D, C, B, and A, respectively. This is illustrated by the rate on wrought-iron pipe shown above. In those instances in which the present rate on any commodity from points in group F to intermediate territory is higher than 75 cents the present and the proposed rates from points in group F to the terminals are the same as the present and proposed rates to intermediate points, and the rates from points in territory east of group F are constructed by adding 5, 10, 15, and 25 cents to the rates from group F to make the rates from groups D, C, B, and A, respectively. This is illustrated by the rate on paint shown above.

The present rates on the schedule B commodities from group F, or points west thereof, are not higher to intermediate than to terminal points. The rates from points east of group F to intermediate territory are constructed by adding to the rates from group F 7 per

cent from points in groups E and D, 15 per cent from groups C and B, and 25 per cent from group A. The proposed rates to the terminals and to intermediate territory are generally constructed by using the present rate from group F as a basis and adding thereto 10, 15, 20, 25, and 35 cents from points in groups E, D, C, B, and A, respectively. This is illustrated by the rates on the following items in tariff 1-P:

Item No.	Caption.	Groups.								
		A	B	C	D	E	F	G	H	I
304	Agricultural implements:									
	Present to terminals.....	\$1.25	\$1.25	\$1.25	\$1.25	\$1.25	\$1.25	\$1.25	\$1.25	\$1.25
	Present to intermediates....	1.56	1.44	1.44	1.34	1.34	1.25	1.25	1.25	1.25
	Proposed to terminals.....	1.60	1.50	1.45	1.40	1.35	1.25	1.25	1.25	1.25
	Proposed to intermediates..	1.60	1.50	1.45	1.40	1.35	1.25	1.25	1.25	1.25
338	Ammunition:									
	Present to terminals.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
	Present to intermediates....	1.25	1.15	1.15	1.07	1.07	1.00	1.00	1.00	1.00
	Proposed to terminals.....	1.35	1.25	1.20	1.15	1.10	1.00	1.00	1.00	1.00
	Proposed to intermediates..	1.35	1.25	1.20	1.15	1.10	1.00	1.00	1.00	1.00
718	Window glass:									
	Present to terminals.....	.90	.90	.90	.90	.90	.90	.90	.90	.90
	Present to intermediates....	1.13	1.04	1.04	.96	.96	.90	.90	.90	.90
	Proposed to terminals.....	1.25	1.15	1.10	1.05	1.00	.90	.90	.90	.90
	Proposed to intermediates..	1.25	1.15	1.10	1.05	1.00	.90	.90	.90	.90

In a few instances the rates proposed from group F to the coast are higher than the present rates to intermediate points by amounts varying from 5 to 15 cents. In instances where the rate is less than \$1, the maximum amount by which the proposed coast rate exceeds the rate to intermediate points is 5 cents. If between \$1 and \$2, the excess may be 10 cents; if more than \$2, 15 cents. Representative examples of such rates are the following items in tariff 1-P:

Item No.	Caption.	Groups.								
		A	B	C	D	E	F	G	H	I
918	Lumber, built-up wood, etc.:									
	Present to terminals.....	\$0.80	\$0.80	\$0.75	\$0.70	\$0.70	\$0.70	\$0.70	\$0.70	\$0.70
	Present to intermediates....	1.00	.92	.86	.75	.75	.70	.70	.70	.70
	Proposed to terminals.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
	Proposed to intermediates..	1.05	.95	.90	.85	.80	.70	.70	.70	.70
912	Liquors:									
	Present to terminals.....	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
	Present to intermediates....	1.56	1.44	1.44	1.34	1.34	1.25	1.25	1.25	1.25
	Proposed to terminals.....	1.70	1.60	1.55	1.50	1.45	1.35	1.35	1.35	1.35
	Proposed to intermediates..	1.60	1.50	1.45	1.40	1.35	1.25	1.25	1.25	1.25
976	Musical instruments:									
	Present to terminals.....	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00
	Present to intermediates....	2.50	2.30	2.30	2.14	2.14	2.00	2.00	2.00	2.00
	Proposed to terminals.....	2.65	2.50	2.40	2.30	2.25	2.15	2.15	2.15	2.15
	Proposed to intermediates..	2.50	2.35	2.25	2.15	2.10	2.00	2.00	2.00	2.00

The present rates on the schedule A items now accord with the long-and-short-haul clause of the fourth section, and compliance with the terms of our order of June 30, 1917, did not necessitate any revision of these rates. No change is proposed in the rates on about 75

items of this character. The rates on about 40 items have been revised, of which representative examples are the following items in tariff 1-P:

Item No.	Caption.	Groups.								
		A	B	C	D	E	F	G	H	I
318	Threshers:									
	Present to terminals.....	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.40
	Present to intermediates.....	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.40
	Proposed to terminals.....	1.85	1.72	1.66	1.60	1.56	1.43	1.32	1.32	1.22
	Proposed to intermediates.....	1.75	1.62	1.56	1.50	1.46	1.33	1.22	1.22	1.12
336	Ammonia:									
	Present to terminals.....				.60	.60	.60	.60	.60	.60
	Present to intermediates.....				.60	.60	.60	.60	.60	.60
	Proposed to terminals.....				.70	.65	.60	.60	.60	.55
	Proposed to intermediates.....				.70	.65	.60	.60	.60	.55
1196	Silica:									
	Present to terminals.....				.50	.50	.50	.50	.50	.50
	Present to intermediates.....				.50	.50	.50	.50	.50	.50
	Proposed to terminals.....				.55	.55	.50	.50	.50	.50
	Proposed to intermediates.....				.55	.55	.50	.50	.50	.50

On the last two items no rates are published from points in groups A, B, and C. At the hearing some general objections were made to the increases proposed, but in the main, the objections were directed to particular rates in which shippers present had an active interest. These objections were developed in considerable detail as to the rates on the following items in tariff I-P: Item 342, argols; 710, plate glass; 712, rough rolled glass; 718, window glass; 930, machinery; 952, marble; 1000, creosote oil; 1218, staves and heading; 1264, tin cans; 1322, turpentine; 1506, hemp sisal; 1514, structural steel; 1566-68, cast-iron pipe; 1572, wrought-iron pipe; 1740, tin plate; 1758, wire rope; and item 1240 in tariff 4-N respecting chair stock. We show below the present and proposed rates to terminals and to intermediate points on each of these items:

Item No.	Caption.	From groups.								
		A	B	C	D	E	F	G	H	I
342	Argols, in bags, min. wt. 40,000 pounds:									
	Present to coast.....	\$0.80	\$0.80	\$0.80	\$0.80	\$0.80	\$0.80	\$0.80	\$0.80	\$0.80
	Present to intermediates.....	1.00	.92	.92	.86	.86	.80	.80	.80	.80
	Proposed to coast.....	1.15	1.05	1.00	.95	.90	.80	.80	.80	.80
	Proposed to intermediates.....	1.15	1.05	1.00	.95	.90	.80	.80	.80	.80
710	Plate glass, min. wt. 30,000 pounds:									
	Present to coast.....	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50
	Present to intermediates.....	1.58	1.73	1.73	1.61	1.61	1.50	1.50	1.50	1.50
	Proposed to coast.....	1.95	1.85	1.80	1.75	1.70	1.60	1.60	1.60	1.60
	Proposed to intermediates.....	1.85	1.75	1.70	1.65	1.60	1.50	1.50	1.50	1.50
712	Rough rolled glass, min. wt. 30,000 pounds:									
	Present to coast.....	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
	Present to intermediates.....	1.55	1.44	1.44	1.34	1.34	1.25	1.25	1.25	1.25
	Proposed to coast.....	1.60	1.50	1.45	1.40	1.35	1.25	1.25	1.25	1.25
	Proposed to intermediates.....	1.60	1.50	1.45	1.40	1.35	1.25	1.25	1.25	1.25
718	Window glass, min. wt. 50,000 pounds:									
	Present to coast.....	.90	.90	.90	.90	.90	.90	.90	.90	.90
	Present to intermediates.....	1.13	1.04	1.04	.96	.96	.90	.90	.90	.90
	Proposed to coast.....	1.25	1.15	1.10	1.05	1.00	.90	.90	.90	.90
	Proposed to intermediates.....	1.25	1.15	1.10	1.05	1.00	.90	.90	.90	.90

Item No.	Caption.	From groups.								
		A	B	C	D	E	F	G	H	I
930	Machinery, min. wt. 30,000 pounds:									
	Present to coast.....	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50
	Present to intermediates.....	1.88	1.73	1.73	1.61	1.61	1.60	1.50	1.50	1.50
	Proposed to coast.....	1.92	1.87	1.82	1.77	1.72	1.60	1.60	1.60	1.40
	Proposed to intermediates.....	1.75	1.62	1.56	1.50	1.46	1.33	1.22	1.22	1.12
952	Marble, min. wt. 36,000 pounds:									
	Present to coast.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
	Present to intermediates.....	1.25	1.15	1.15	1.07	1.07	1.00	1.00	1.00	1.00
	Proposed to coast.....	1.35	1.25	1.20	1.15	1.10	1.00	1.00	1.00	1.00
	Proposed to intermediates.....	1.35	1.25	1.20	1.15	1.10	1.00	1.00	1.00	1.00
1000	Cresote oil in tank cars:									
	Present to coast.....	.75	.75	.75	.75	.75	.75	.75	.75	.75
	Present to intermediates.....	.94	.86	.86	.80	.80	.75	.75	.75	.75
	Proposed to coast.....	1.15	1.05	1.00	.95	.90	.80	.80	.80	.80
	Proposed to intermediates.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
1215	Staves and heading, min. wt. 60,000 pounds:									
	Present to coast.....	.....	.....	.....	.60	.60	.60	.60	.60	.60
	Present to intermediates.....	.....	.....	.....	.60	.60	.60	.60	.60	.60
	Proposed to coast.....	.....	.....	.80	.75	.75	.70	.70	.70	.70
	Proposed to intermediates.....	.....	.....	.80	.75	.75	.70	.70	.70	.70
1240	Chair stock of tariff 4-N:									
	Present to coast.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
	Present to intermediates.....	1.25	1.15	1.15	1.07	1.07	1.00	1.00	1.00	1.00
	Proposed to coast.....	1.35	1.25	1.20	1.15	1.15	1.00	1.00	.....	1.00
	Proposed to intermediates.....	1.35	1.25	1.20	1.15	1.15	1.00	1.00	.....	.90
1264	Tin cans, min. wt. 22,000 pounds:									
	Present to coast.....	1.15	1.10	1.05	1.00	1.00	1.00	1.00	1.00	1.00
	Present to intermediates.....	1.15	1.10	1.05	1.00	1.00	1.00	1.00	1.00	1.00
	Proposed to coast.....	1.35	1.25	1.20	1.15	1.10	1.00	1.00	1.00	1.00
	Proposed to intermediates.....	1.30	1.20	1.15	1.00	1.05	.95	.95	.95	.95
1322	Turpentine, in tank cars:									
	Present to coast.....	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
	Present to intermediates.....	1.56	1.44	1.44	1.34	1.34	1.25	1.25	1.25	1.25
	Proposed to coast.....	1.65	1.55	1.50	1.45	1.40	1.30	1.30	1.30	1.30
	Proposed to intermediates.....	1.65	1.55	1.50	1.45	1.40	1.30	1.30	1.30	1.30
1506	Hemp, sisal, min. wt. 24,000 pounds:									
	Present to coast.....	.85	.85	.85	.85	.85	.85	.85	.85	.8
	Present to intermediates.....	1.10	1.00	1.00	.90	.90	.85	.85	.85	.8
	Proposed to coast.....	1.10	1.00	.95	.90	.90	.85	.85	.85	.8
	Proposed to intermediates.....	1.10	1.00	.95	.90	.90	.85	.85	.85	.8
1514	Structural iron, min. wt. 60,000 and 80,000 pounds:									
	Present to coast.....	.75	.75	.75	.65	.65	.65	.65	.65	.50
	Present to intermediates.....	1.10	1.00	1.00	.90	.90	.75	.75	.75	.75
	Proposed to coast.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
	Proposed to intermediates.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
1568	Cast-iron pipe, min. wt. 60,000 pounds:									
	Present to coast.....	.75	.75	.75	.65	.65	.65	.65	.65	.65
	Present to intermediates.....	1.10	1.00	1.00	.90	.90	.75	.75	.75	.75
	Proposed to coast.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
	Proposed to intermediates.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
1574	Wrought-iron pipe, min. wt. 80,000 pounds:									
	Present to coast.....	.75	.75	.75	.65	.65	.65	.65	.65	.65
	Present to intermediates.....	1.10	1.00	1.00	.90	.90	.75	.75	.75	.75
	Proposed to coast.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
	Proposed to intermediates.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
1740	Tin plate, min. wt. 80,000 pounds:									
	Present to coast.....	.84	.75	.75	.65	.65	.65	.65	.65	.65
	Present to intermediates.....	1.10	1.00	1.00	.90	.90	.75	.75	.75	.75
	Proposed to coast.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
	Proposed to intermediates.....	1.10	1.00	.95	.90	.85	.75	.75	.75	.75
1758	Wire rope, min. wt. 50,000 pounds:									
	Present to coast.....	.85	.85	.85	.85	.85	.85	.85	.85	.85
	Present to intermediates.....	1.10	1.00	1.00	.90	.90	.75	.85	.85	.85
	Proposed to coast.....	1.10	1.00	.95	.90	.90	.85	.85	.85	.85
	Proposed to intermediates.....	1.10	1.00	.95	.90	.90	.85	.85	.85	.85

In *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 641, we authorized the transcontinental lines to establish their present rates to terminals and to intermediate points on items 1506, 1514,

1568, 1574, 1740, and 1758. The proposed rates on these items to the terminals are not higher than the present rates then authorized to intermediate territory. From group C and except on items 1506 and 1758 from group E they are lower than the present rates to intermediate points. The proposed rates to terminals and intermediate points on items 342, 718, 1000, and 1215 correspond closely with the proposed rates on the six items just mentioned. The rates proposed from the more easterly groups to the terminals are in some instances somewhat higher than the present rates to intermediate points, but do not appear to be unreasonable or out of proportion to the rates on other articles. Items Nos. 710, 712, 930, 952, and 1322 of tariff 1-P and item 1240 of tariff 4-N are representative examples of rates on schedule B articles. The present rates to the intermediate territory have not been specifically authorized by us, but the relation of such rates to the rates at the terminals was authorized in *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329, and in *City of Spokane v. N. P. Co.*, 21 I. C. C., 400. The proposed rates to the terminals on these items are in some instances slightly higher than the present rates to the intermediate territory, but the amounts by which they exceed such rates do not appear to be out of proportion to the increased hauls.

The carriers propose to cancel all less-than-carload commodity rates from eastern defined territories to the Pacific coast and intermediate points. Our report of June 30, 1917, required that the rates on such commodities to intermediate points should bear the same relation to the terminal rates as the class rates to such points bear to the terminal class rates. It is explained by the carriers that the publication of less-than-carload commodity rates to all points, graded as proposed, was a work of great difficulty, owing to the vast territory involved and the large number of less-than-carload commodity rates which had from time to time been established from eastern points to the Pacific coast on account of water competition. It was also asserted that the establishment of less-than-carload commodity rates on the plan required by us, if carried to its logical conclusion, influenced the rates on these commodities to territory as far east as the Mississippi River and perhaps Chicago, and had the effect of reducing the existing rates on many articles to a large part of the intermediate territory. The carriers therefore preferred to cancel all these rates, leaving the class rates to apply. Many objections to the cancellation of these rates were made by shippers and receivers of freight in various parts of the country. These objections may be summarized as follows:

First, the less-than-carload commodity rates are of long standing.

Second, business has become accustomed to their use, and their cancellation will result in much embarrassment and loss of business

to persons who can not ship in carloads the articles they manufacture or sell.

Third, the increases resulting from the substitution of class rates are unreasonable in the light of all the conditions.

Fourth, the continuation of commodity rates on carloads to the coast and to the intermediate territory, and the cancellation of all the less-than-carload commodity rates, will result in an unreasonable relation in many instances between the carload and less-than-carload rates, and will cause unreasonable disadvantage to less-than-carload shippers.

Fifth, it is proposed to continue carload commodity rates to the coast and to intermediate points, partly in consideration of long-standing commercial conditions, and partly in consideration of the probability of a return of water competition when peace is restored. It is asserted that these conditions have been disregarded as to the less-than-carload commodity rates. The carriers assert that they had some hesitation about the cancellation of all the less-than-carload commodity rates, but believed that the method adopted was the only way in which they could comply with our order of June 30, 1917, without serious sacrifice of revenue. They also assert that if we will modify the terms of that portion of our order relating to less-than-carload rates, giving them treatment similar to that accorded the carload rates, consideration will be given by them to some plan by which, in part at least, these rates may be continued.

PROPOSED RATES OF THE WATER-AND-RAIL LINES THROUGH GALVESTON.

The Southern Pacific Company, by its water-and-rail lines through Galveston, proposes to establish on approximately 60 items which move in large volume from the vicinity of New York, and which are adapted to transportation by water, rates which are the same from the New York piers of the Southern Pacific Company as those maintained by the all-rail lines from Chicago. On 36 of these items no commodity rates are published by the all-rail lines from points east of group D. On 24 items a full line of rates is published from and to all points. The Mallory Steamship Company, in connection with the Atchison, Topeka & Santa Fe Railway Company, proposes to publish the same rates on the 36 items from the piers of the Mallory line at New York to California ports and intermediate points as are proposed by the Southern Pacific Company. No objection was urged against the proposed rates from these piers on the 36 items upon which the all-rail lines do not publish rates from points east of group D.

Considerable criticism was offered respecting the policy of the Southern Pacific Company in singling out 24 items from a list of approximately 400, upon which a full line of rates is published from

all groups to the Pacific coast, which are usually the same as by all-rail lines, and in proposing thereon rates which are generally 20 cents lower than those proposed by the all-rail lines. The reasons given by the Southern Pacific for so singling out these 24 items are that in connection with the all-rail lines that company has heretofore published on nearly all commodities from New York the same rates as were applied from Chicago; that the capacity of the ships available is not sufficient to move the traffic which would be offered if the Chicago rates were published on the entire list of commodities; that the traffic officers of the company desired to disturb as little as possible the existing conditions on the Pacific coast, and the rates applicable thereto from New York. It alleges that the rates proposed, while lower than reasonably might be applied, are not so low as to fail to provide compensation for the service rendered, and that the acceptance of this traffic at these rates can not be considered as imposing an undue burden upon other traffic.

Against the application of the Southern Pacific respecting the selection of the 24 items, it is urged that the use of its facilities for transportation is a right that belongs to the shippers of the commodities not included in this selected list. Many such articles are produced in considerable volume on the Atlantic seaboard, and are adapted in a greater or less degree to transportation by water. It is urged that the shippers of such articles have as much right to consideration at the hands of this water-and-rail line as the shippers of the 24 selected items. There can be no doubt that this carrier may, if it sees fit, publish rates via its line from New York piers to the points on its lines in western states lower than the rates contemporaneously applied by the all-rail lines; but it is urged that the publication of such rates on a limited number of items, and the publication of the all-rail rates on all other items, will tend toward making this line a carrier exclusively of commodities within such selected list, and result in the exclusion of other shippers from the use of these facilities on equal terms.

The Southern Pacific is a party to the application of the all-rail lines which presents to us for approval a new schedule of rates from New York to western points. As an all-rail carrier, it concurs in the representations made to us respecting these rates that they are not unreasonable *per se* or relatively, one as compared with another. As a water-and-rail line, however, it assumes a different attitude, namely, that another and different relation as between these rates is more nearly proper when the rates apply via its water-and-rail line. For example, it is proposed to make the rate via the all-rail lines from New York to San Francisco \$1.10 on bolts, nuts, and washers, and also \$1.10 on billets, blooms, etc. The Southern Pacific, however, proposes to publish from its New York piers the rates

of \$1.10 on billets and blooms, and 90 cents on bolts, nuts, washers, etc. Both groups of iron and steel articles originate on or near the Atlantic seaboard. Both are adapted to water transportation. Both take the same rate at present by all-rail and water-and-rail lines. It may be urged that such a relation of rates would be prejudicial to shippers of billets and blooms and unduly preferential of shippers of bolts, nuts, washers, etc. Under the circumstances now existing, all the facilities for transportation should be utilized to the fullest possible extent. It is not urged, however, that the selection of these 24 commodities, upon which this line proposes to publish lower rates than the all-rail lines, has been influenced by any such considerations.

FIFTEENTH SECTION APPLICATION NO. 1822.

By this application authority is sought to file increased rates on barley, beans, canned goods, asphaltum, dried fruits, and wine from California ports via rail-and-water lines through Galveston to the Atlantic seaboard. It is proposed to increase the rates on these articles to the level of the all-rail rates. No objection was presented to this application.

FIFTEENTH SECTION APPLICATION NO. 1077.

By this application authority is sought to file increased rates on commodities from designated points in the states of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Mississippi, Nebraska, Oklahoma, Tennessee, Texas, and Wisconsin, and on certain named items from the New York piers of the Southern Pacific Company to Pacific coast points on traffic destined and consigned through to points in Japan, China, and the Philippine Islands, and, in specific cases, to points in Central and South America and Mexico. These rates are published in Trans-Continental Freight Bureau Joint and Proportional Tariff No. 22-H, R. H. Countiss, agent's, I. C. C. No. 1039. Representative examples of these rates and the changes proposed follow. It should be understood that the rates named apply in the main from Chicago and points west thereof. Such rates are, however, used as components in constructing export rates from points west of Chicago.

Item No.	Commodity.	Present.	Propose
		<i>Cents.</i>	<i>Cents.</i>
160	Iron and steel articles.....	32.5	47.5
195	Anchor rods, angles, etc.....	40	55
280	Machinery.....	55	75
310	Paints.....	65	85
315	Paper and articles of paper.....	65	85
335	Cast-iron pipe connections.....	45	60
350	Railway equipment.....	50	65

Section 3 of the tariff contains a blanket item naming rates on all commodities with certain designated exceptions as to articles which are fragile, perishable, or dangerous to transport. The present commodity rate is \$1.25 from the points of origin named to certain Pacific coast points on traffic destined to named points in China, Japan, and the Philippine Islands. The proposed rate is \$1.50.

The present rate is \$1.50 to certain Pacific coast ports on traffic destined to named points in Australia, New Zealand, and the Fiji Islands. The proposed rate is \$1.75. It is explained that the present export rates were established in the light of normal conditions when traffic was moving freely by water, both from the east and west coasts of the United States to Asiatic and other countries. The purpose of the rates has been to secure to the transcontinental lines participation in the traffic moving for export. Under normal conditions the ocean rates from the east coast of the United States were only small amounts higher than the rates from the Pacific coast on traffic for Asiatic countries, and on traffic to New Zealand and Australia the rates from Atlantic coast points were usually less than from Pacific coast points. The present situation is that there is now as good or a better service from Pacific coast ports to Australia as from Atlantic ports, and the ocean rates, although indefinite and changing, are approximately the same from the Atlantic as from the Pacific coast. As to oriental traffic, the only definite figure which can be quoted as being fixed is that prevailing on the subsidized traffic subject to the control of the Japanese government. On that traffic the maximum rate from the Atlantic seaboard is \$30 per ton of 2,240 pounds, while on the same traffic from the Pacific coast the maximum rate is \$20 per ton of 2,000 pounds. Traffic from the east coast of the United States to the orient now moves through the Panama Canal, the Suez Canal not being open for commercial traffic. The carriers assert that the conditions hitherto prevailing have made necessary the publication of rates on these items and on other commodities materially lower than the domestic rates, but that the conditions now existing are such that they are not justified in continuing these rates which, in many instances, are extremely low.

FIFTEENTH SECTION APPLICATION NO. 1088.

By this application authority is sought to file increased rates from points in the states of Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, Oklahoma, Tennessee, Texas, Wisconsin, and from the New York piers of the Southern Pacific Company to Pacific coast ports on traffic destined and consigned through to Australia, New Zealand, and beyond. These rates are carried in Joint and Proportional Export Tariff No. 20-F, I. C. C. No. 1022 of

R. H. Countiss, agent. Representative examples of such rates are the following:

Item No.	Commodity.	Present.	Proposed.
10	Agricultural implements.....	\$1.17	\$1.25
40	Drugs.....	1.20	1.50
70	Grading and road-making implements.....	1.00	1.25
95	Dredging machinery.....	1.00	1.25
150	Toilet soap.....	1.80	1.00
175	Vehicles.....	1.10	1.25

There is also published in section 3 of the tariff a blanket commodity rate applicable upon all commodities, with designated exceptions as to articles which are fragile and perishable or dangerous to transport. The present rate is \$1.25 on traffic destined to points in Japan, China, and the Philippine Islands, and \$1.50 on traffic destined to points in Australia, New Zealand, or the Fiji Islands. It is proposed to increase each of these rates by 25 cents.

FIFTEENTH SECTION APPLICATION NO. 1084.

By this application authority is sought to file increased import rates on commodities from Pacific coast ports to points in the United States and Canada on traffic originating in Asia and Australia, and in specific cases on shipments originating in Central and South America, Mexico, and the Hawaiian Islands. These rates are published in Trans-Continental Freight Bureau Eastbound Import Tariff No. 26-E, R. H. Countiss, agent's, I. C. C. No. 1033. Approximately 40 carload and 30 less-than-carload items are embraced in the list. The rates to eastern defined territories are usually, but not invariably, blanketed to all points in groups A to J, inclusive. Representative examples of carload rates are the following:

Item No.	Commodity.	Present.	Proposed.
45	Cocoa beans.....	\$0.65	\$0.75
75	Bulbs.....	1.00	1.15
90	Camphor.....	1.00	1.25
160	Coffee (to points in group C and west).....	.65	.75
230	Chinaware, crockery, etc.....	1.00	1.25
275	Glassware, n. o. s., and glasses.....	1.00	1.25
415	Oils.....	\$0.55-.65	.65

Representative examples of less-than-carload rates are the following:

Item No.	Commodity.	Present.	Proposed.
10	Antimony ware.....	\$1.50	\$2.00
30	Bamboo.....	1.50	1.75
215	Drugs.....	2.00	2.50
320	Isinglass.....	1.75	2.00
380	Matting.....	1.50	1.75

No general objections were made to these increases in export and import rates. Some specific objections were urged against particular rates by persons whose business was in some degree affected by the changes proposed.

FOURTH SECTION APPLICATIONS.

By Fourth Section Application No. 11149, the Western Pacific Railroad Company asks authority to apply from the New York piers of the Old Dominion Steamship Company, via the ships of that company, to Norfolk, Va., and connecting rail lines beyond the same rates to California coast and intermediate points that are proposed to be applied by the Southern Pacific via its water-and-rail line through Galveston on the 24 commodities heretofore described, while applying higher rates from intermediate points on lines east of Chicago.

By Fourth Section Application No. 11150; the Atchison, Topeka & Santa Fe Railway Company, the Los Angeles & Salt Lake Railroad, the Western Pacific Railway and connections also seek authority to apply via all-rail lines from New York, N. Y., to California coast and intermediate points the same rates on the 24 commodities which the Southern Pacific proposes to apply, and higher rates from intermediate points east of group D.

By Fourth Section Applications Nos. 11178 and 11197 the Atchison, Topeka & Santa Fe Railway, the Los Angeles & Salt Lake Railway, the Western Pacific Railway, the Northern Pacific Railway, the Great Northern Railway, the Chicago, Milwaukee & St. Paul Railway, the Oregon-Washington Railroad & Navigation Company, the Spokane, Portland & Seattle Railway, the Canadian Pacific Railway, the Grand Trunk Pacific Railway, and the Canadian Northern Railway and their connections seek authority to apply from New York via all-rail lines to the Pacific coast ports the same rates on export traffic to points in Japan, China, Philippine Islands, Central and South America, Mexico, Australia, Fiji Islands, and New Zealand that are applied from the New York piers of the Southern Pacific, while continuing higher rates from intermediate points in transcontinental groups A, B, and C. The all-rail lines do not now publish through export rates from points east of group D to Pacific coast ports. Export rates are published on approximately 100 commodity items from many, but not all, points in group D and west. These rates are ordinarily the same from all points from which such rates are published. Upon 20 of these items, the Southern Pacific proposes to publish via its water-and-rail lines the same rates from its piers at New York to California ports as are proposed by the all-rail lines from points in group D.

By Fourth Section Applications Nos. 11186 and 11196 the Atchison, Topeka & Santa Fe Railway, the Los Angeles & Salt Lake Railway, the Western Pacific Railway, the Northern Pacific Railway, the Great Northern Railway, the Chicago, Milwaukee & St. Paul Railway, the Oregon-Washington Railroad & Navigation Company, the Spokane, Portland & Seattle Railway, the Canadian Pacific Railway, the Grand Trunk Pacific Railway, and the Canadian Northern Railway and their connections seek authority to apply via their lines the same rates from the Pacific coast ports to New York, N. Y., on import traffic originating in Asia, Philippine Islands, Australia, New Zealand, Fiji Islands, and in specific cases on shipments originating in Central and South America, Mexico, and the Hawaiian Islands as are applied by the Southern Pacific via its route through Galveston, while maintaining higher rates to points east of trans-continental group D.

By Fourth Section Application No. 11187 the same authority as outlined above is sought for the Western Pacific Railway and its connections via Norfolk and the Old Dominion Steamship Company as to the rates from all California coast points to the piers of the Old Dominion Steamship Company at New York. Import commodity rates to eastern defined territories are proposed by the all-rail lines on approximately 100 carload items and 70 less-than-carload items. These rates are usually, but not invariably, blanketed to all eastern defined territories. In the few cases where the rates are not so blanketed, the Southern Pacific proposes to apply the group D rates to its piers at New York.

We have carefully considered all of the evidence offered, both of a general and of a specific character, and it is our conclusion and we find:

1. The carriers should be authorized to file the increased rates proposed by the all-rail lines on all the carload commodities embraced in applications Nos. 324 and 1399.

2. The water-and-rail lines via Galveston should be authorized to file the increased carload rates proposed on articles as to which through all-rail rates are not published from group A to the Pacific coast and intermediate points.

3. The Southern Pacific Company should be denied authority to file rates on the 24 items mentioned in the report which are lower than the rates proposed by the all-rail lines, unless corresponding rates are published by that company on all commodities which are adapted to water transportation.

4. The authority sought by the all-rail lines to cancel all of the less-than-carload commodity rates from eastern defined territories to the Pacific coast and intermediate points should be denied, but they should be authorized to file increased rates on less-than-carload com-

modities to Pacific coast points not higher than the present rates on such commodities to the highest rated intermediate points.

5. The carriers should be authorized to file the increased export rates proposed in their applications Nos. 1077 and 1083 from eastern defined territories to the Pacific coast.

6. The carriers should be authorized to file increased import rates as described in application No. 1084 from Pacific coast ports to eastern defined territories.

7. The water-and-rail lines through Galveston should be authorized to establish commodity rates on barley, beans, canned goods, asphaltum, dried fruits, and wine from all California ports to the Atlantic seaboard not higher than the present all-rail rates.

8. The all-rail lines and the water-and-rail lines through Norfolk seeking authority to depart from the provisions of the fourth section in order to meet the competition of the Southern Pacific Company via its water-and-rail route through Galveston have not shown that they are at such disadvantage in respect to this traffic as to justify fourth section relief and these applications should be denied.

An order will be entered in accordance with these findings.

MITCHISON, *Commissioner*, dissenting in part:

The order of the Commission entered June 30, 1917, effective October 15, 1917, which denied authority to maintain rates on commodities from eastern defined territory to Pacific coast ports lower than the rates contemporaneously in effect on like traffic, to intermediate points, could manifestly have been met by the filing of tariffs reducing the rates to intermediate points to the Pacific coast port level as well as by increasing the coast terminal rates. The carriers have followed the latter course. I am unable to agree with the majority of the Commission in the interpretation it placed upon the amended fourth section of the act in *Transcontinental Rates*, 46 I. C. C., 236, 252, which followed its decision *Reopening Fourth Section Applications*, 40 I. C. C., 35. The adjustment proposed in the tariffs now before the Commission can be justified only by ignoring the last paragraph of the amended fourth section, and this in my judgment can not lawfully be done.

I can not find that as to the commodity rates proposed in schedules B and C, where advances are made either to the intermountain country or to the Pacific coast ports, the carriers have justified the advanced rates as reasonable. In cases before the Commission in which certain rates were prescribed as reasonable in and of themselves to various intermountain points, the whole traffic of this section was not before the Commission as is now the case, and it by no means follows that rates which might then have been prescribed as reason-

able would have been made if the whole Pacific slope traffic instead of a limited portion thereof had been under consideration.

In the remainder of the report I concur.

FIFTEENTH SECTION ORDER No. 283.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 21st day of January, A. D. 1918.

Application under Section 15 of the act to regulate commerce as amended August 9, 1917, for approval for filing of an increased rate, fare, charge, or classification.

Fifteenth Section Applications Nos. 324, 1399, 1822, 1077, 1083, and 1084.

Commodity Rates from and to Western Points.

The above-described applications having been duly heard, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the authority sought by the Southern Pacific Company to file tariffs establishing group D rates via its water-and-rail route through Galveston on items Nos. 338, 354, 1046, 1122, 1130, 1430, 1438, 1440, 1442, 1526, 1560, 1562, 1590, 1620, 1626, 1630, 1636, 1690, 1700, 1706, 1714, 1742, 1764, and 1766 of Trans-Continental Tariff 1-P, while contemporaneously publishing higher group A rates on other commodities be, and it is hereby, denied.

It is further ordered, That the authority sought under Fifteenth Section Applications Nos. 324 and 1399, via the all-rail lines, water-and-rail lines via Norfolk, Va., and water-and-rail lines via Galveston, Tex., to file increased carload commodity rates from eastern defined territories to the Pacific coast and intermediate points, except as hereinbefore restricted, be, and the same is hereby, granted.

It is further ordered, That the authority sought by applications Nos. 324 and 1399 to cancel all less-than-carload commodity rates from eastern defined territories to the Pacific coast and intermediate points be, and it is hereby, denied.

It is further ordered, That the petitioners named in Fifteenth Section Applications Nos. 324 and 1399 be, and they are hereby, authorized to file increased less-than-carload commodity rates from eastern defined territories to the Pacific coast not higher than the present rates on the same commodities to intermediate points.

It is further ordered, That the petitioners in Fifteenth Section Application No. 1822 be, and they are hereby, authorized to file in-

creased commodity rates via rail-and-water lines through Galveston not higher than the present all-rail rates on barley, beans, canned goods, asphaltum, dried fruits, and wine from California ports to the Atlantic seaboard.

It is further ordered, That the petitioners named in Fifteenth Section Application Nos. 1077, 1083, and 1084 be, and they are hereby, authorized to file the increased export and import commodity rates named in their applications from and to eastern defined territories to and from the Pacific coast ports.

It is further ordered, That the authority sought by Fourth Section Applications Nos. 11149, 11150, 11178, 11186, 11187, 11196, and 11197 be, and it is hereby, denied.

It is further ordered, That the effective date of Fourth Section Order No. 6790, of June 30, 1917, which by supplemental Fourth Section Order No. 6790, of September 28, 1917, was indefinitely postponed, be, and the same is hereby, fixed as March 15, 1918.

It is further ordered, That said rates may be established upon not less than 10 days' notice to the Commission and to the general public by filing and posting in the manner prescribed in section 6 of the act to regulate commerce.

And it is further ordered, That tariffs filed under authority of this order shall bear on title-pages thereof the following notation:

Increased rates in this tariff are filed on 10 days' notice under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 283 of January 21, 1918.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

AFTER RECESS.

The committee reassembled pursuant to the taking of recess at 2 o'clock p. m.

The CHAIRMAN. I believe Mr. McCarthy is to be heard first this afternoon.

**STATEMENT OF MR. JOHN F. SHAUGHNESSY, PRESIDENT OF THE
INTERMEDIATE RATE ASSOCIATION (Continued).**

Mr. SHAUGHNESSY. Mr. Chairman, I want to make a brief supplemental statement at this time before Mr. McCarthy proceeds with his statement.

During the hearings before the Senate Committee on Interstate Commerce the statement was quite generally made by different witnesses, railroad witnesses and others, that if this bill was passed and an absolute long-and-short-haul rule provided that the carriers would probably go out of the coast-to-coast business, and that they would therefore lose a tonnage approximating 3,000,000 to 3,500,000 tons. Now, this 3,000,000 to 3,500,000 tons mentioned in that testimony

may, erroneously, be understood to be the total westbound transcontinental tonnage reaching the Pacific coast terminals, which is assumed to come from all eastern defined territory, not from Atlantic coast territory alone, but inland territory as well, the Pittsburgh territory, the Cincinnati-Detroit territory, the Chicago territory, the Mississippi River territory, and the Missouri River territory.

As a matter of fact, this tonnage is much greater, probably twice as large as that.

I want to get into the minds of the members of this committee a declaration of the Interstate Commerce Commission as to just about what westbound transcontinental tonnage is moving from the Atlantic coast, where there is some water competition, and in that connection I will read an extract from the Interstate Commerce Commission's decision in the Intermountain Rate Cases, 32 I. C. C. page 616. In that decision they say:

Of the commodities shown in Schedule C, 961,768 tons moved from transcontinental territory A and B (Atlantic coast and Pittsburgh territories), to the Pacific coast during the year 1913. Of those 422,359 tons, or approximately 44 per cent, moved by water, and 539,409 tons, or 56 per cent, by rail. The record does not show the total tonnage moving from all territories to the Pacific coast for that year.

It was shown in the former hearings that in 1906 the total tonnage moving from all territories by rail to the Pacific coast was approximately 3,500,000 tons.

That is the figure to which they have referred. The decision goes on to say:

The 961,768 tons of Schedule C commodities moving from territory along or contiguous to the Atlantic seaboard constitutes a large percentage of the business to the Pacific coast.

That gives the segregation and straightens out the record as to where the tonnage was coming from at that time and the proportions in which it was moving by rail and by water.

I want to make a further point here as to the findings of the Interstate Commerce Commission regarding the water competition in one of the Intermountain Rate Cases which was decided on June 5, 1916. This case was heard and submitted in April, 1916. At this time the American-Hawaii Steamship Co. and the Luckenbach Steamship Co., water carriers between the Atlantic and Pacific coasts, appeared and asked that the then existing low rail rates be removed, and that the absolute long-and-short-haul section be put into effect. In that case the Interstate Commerce Commission made the following finding:

The two principal steamship companies that formerly operated between the Atlantic and Pacific coasts via the canal—the American-Hawaiian Steamship Co. and the Luckenbach Steamship Co.—through their principal traffic officers announced that owing in part to the obstructions to passage through the canal, which had rendered it impossible to use that route from September, 1915, to April, 1916, and in part to the unprecedentedly high rates which are now being offered for the transportation of many kinds of ocean freight, they had for the time being withdrawn all their ships from the coast-to-coast business, and chartered many of them for other purposes for periods extending into the future from 3 to 18 months. The prices obtained for the use of these ships, whether by the month or by the voyage, were exceptionally high. So long as such rates can be obtained for ocean service between the United States and foreign countries, there is no doubt that the coast-to-coast business will be unattractive to steamship lines at the rates now obtainable. Both of these companies announced their intention ultimately to return to this service, but stated that such return was

unlikely before the end of the year 1916, and that the time of such return depended in part upon the measure of the rates they would be able to secure for this service in competition with the rail lines. The result of all of the evidence offered was to show that there is not at this time any effective water competition between the two coasts and that there is little likelihood of any material competition by water during the present calendar year, irrespective of the action the commission may take with respect to these petitions.

Here is a finding by the Interstate Commerce Commission in brief and concise form, that there has been no effective water competition since the slides in the Panama Canal, in 1915, that there would be none in the reasonably near future, and that ocean carriers had given notice that they would not return to the service until the competitive rail rates were made less stringent, from which it follows that there was no occasion for the unjust and unreasonable burden of discrimination which was placed upon the intermountain points in January, 1915, following the opening of the Panama Canal. In the face of its own finding as to the elimination of water competition, did the commission invoke the absolute rule of the fourth section at that time? No; on the contrary, we have been until March 15 of this year getting the law into actual operation. Because of the reasons which I have given here, and which appear in my testimony before the Senate committee, I urgently request that the Hayden bill receive favorable consideration and action by this honorable committee.

Mr. SHAUGHNESSEY. Mr. Chairman, I now ask that Mr. McCarthy be heard.

The CHAIRMAN. We will be glad to hear Mr. McCarthy now.

STATEMENT OF MR. W. S. McCARTHY, REPRESENTING THE TRAFFIC BUREAU OF UTAH.

Mr. McCARTHY. Mr. Chairman, my name is W. S. McCarthy; I am representing the traffic bureau of Utah, an organization composed of the principal shippers of the cities of Ogden, Salt Lake City, and Provo, Utah. Mr. Chairman, I would like to have considered as a part of this record my statement made before the Senate committee.

The CHAIRMAN. You have permission to put anything in your statement that you desire.

(The statement referred to is as follows:)

STATEMENT OF MR. W. S. McCARTHY, REPRESENTING THE TRAFFIC BUREAU OF UTAH.

Mr. McCARTHY. My name is W. S. McCarthy, representing the traffic bureau of Utah, an organization composed of the principal shippers of Ogden, Salt Lake City, and Provo, Utah, which has for its purpose the protection, you might say, of the public in the matter of freight rates.

Mr. Chairman, it has always been claimed by the carriers that rates to Utah were not sufficiently high, notwithstanding the fact that they are generally at the present time, and for a number of years have been, very much higher than to the terminal points, 800 miles distant.

We, in the course of this hearing, have heard of the various kinds of competition, of actual water competition, of market competition,

of potential water competition, but we are afflicted with a different kind of water competition. Ours is reflected water competition.

The CHAIRMAN. Where do you get that term, "reflected water competition"?

Mr. McCARTHY. That is a term coined by the carriers, I think, indicating that the tonnage might move from Pittsburgh, possibly, to New York, and then around to San Francisco and back into Salt Lake City, and in that way, any rate made that way, would get the benefit of—that would be reflected water competition.

The rates generally to Utah, as I said, are on a much higher basis than to the Pacific coast terminals. The only reason ever offered by any carriers that I have ever heard of, for maintaining a higher rate at the interior than at the terminal, is water competition, and they claim that the rates at the coast are subnormal.

In that connection, showing the conditions as to the line west of Ogden and Salt Lake City, I would like to introduce into this record the testimony of Mr. C. J. McDonald, assistant superintendent of transportation for the Southern Pacific Co., in I. C. C. Docket, No. 8260, relative to operating conditions on the Southern Pacific.

The CHAIRMAN. What phase of the question does that testimony deal with?

Mr. McCARTHY. Well, my purpose, Senator, is to show the operating conditions west of Ogden and what a difficult and expensive haul this is; what a difficult and expensive line the tonnage travels over after it leaves Utah, and for example, a rate we will say of 65 cents from Pittsburgh to the Pacific coast on iron and steel articles. When the same tonnage moves to Utah, at Ogden, the rate is 90 cents, and yet they are relieved of this haul.

The CHAIRMAN. Does this testimony you speak of deal with the question of the expense of that haul and difficulty?

Mr. McCARTHY. Not directly, but it was put in in a case involving a plea for a lower rate to show it was not possible to make a lower rate because of these difficult operating conditions. It is not lengthy.

The CHAIRMAN. Well, if it is short, you can put it in.

Mr. McCARTHY. Mr. McDonald was under examination by the attorney of the Southern Pacific Co., Mr. Squiers.

Mr. MANN. What case is that, Mr. McCarthy?

Mr. McCARTHY. I. C. C. Docket No. 2360.

Mr. MANN. Yes, sir; I know; but what—

Mr. McCARTHY (interposing). As I recall it, it was a plaster-rate case.

Mr. SCANDRETT. You have not the title of the case?

Mr. McCARTHY. No, sir; I have not. Mr. Squiers, questioning Mr. McDonald, says:

Mr. SQUIERS. Now, take up operating conditions on the Salt Lake division and the Sacramento division, between Ogden and Sacramento, including the Lucin cut-off. Starting out of Ogden west, we encounter the Lucin cut-off, total length of 103 miles, constructed at a cost of some \$12,000,000, partially constructed on the old lake bed, 15 miles of fill, 12 miles of trestle. It was constructed for the purpose of getting away from the old, heavy-grade line over the Promontory branch, 143 miles. On the Lucin cut-off, the maximum grade is practically insignificant, as compared with the very heavy 1.7 per cent grade on the old line.

Now, the cost of maintenance of the Lucin cut-off is very heavy; it runs in the neighborhood of \$1,500 a mile, as compared with \$1,000 to \$1,100 on other portions of the Salt Lake division.

Further, as an insurance against the emergency requirements in the way of washes and starrung out of the fill, we keep under load all the time 75 cars of rock, and we keep ready for use a Lidgerwood unloader, side plow, and a locomotive hoist; the total equipment representing an investment of some \$75,000 that is kept for no other purpose than to insure the keeping open of the Lucin cut-off.

There are also some serious water conditions adjacent to or existing on the Salt Lake division. At several points it is necessary to pipe water. One of the pipe lines is 45 miles long, and the total miles of pipe line is about 110; it is necessary to go back in the mountains and get the water over to the track.

The western division of the Salt Lake division is from Hazen west on a nine-tenths of 1 per cent grade, but before you get to that there is out of Montello (which is the first operating division terminal west of Ogden) 1.4 per cent grade westbound for a distance of 19 miles, which grade controls the movement over the district between Montello and Carlin. On the Mikado, which is rated 4,100 ms., between Ogden and Montello we are only able to secure over this controlling grade 1,950 ms.

That about covers the Salt Lake division items.

The Sacramento division starts out at Sparks and extends west over what is known as the Sierra Nevada grade. It starts practically at Sparks, continuing west and reaching a maximum out as far as Truckee of $1\frac{1}{2}$ per cent; from Truckee to the summit, a distance of 15 miles, the maximum grade is 125 to the mile, or 2.37 per cent. The amount of tonnage necessarily is controlled between Truckee and Booth Canyon. The first operating terminal west of the summit is Rossville, and the tonnage is necessarily controlled by that 2.37 per cent grade.

Now, in the 53 miles between Sparks and Summit there are 24 miles of curves, averaging 103 degrees to the mile.

We use almost altogether Mallet locomotives on the Sierra grade, and for the year ending June 30, 1915, there moved between Sacramento and Sparks 759,000,000 gross ton-miles per locomotive. On a portion of the Sacramento division, which is a great deal less difficult to operate, extending from Rossville north to Red Bluff, there moved 347,000,000 gross ton-miles with 175,000 locomotive miles, or 1,980 gross tons per locomotive; in other words, the gross tons between Sacramento and Sparks were 119 per cent greater than the gross tons on the more favored district, yet the locomotive miles required were 347 per cent greater, and that is in the face of the fact that the power over the hills is practically all Mallet type, 98,000 tractive power units, as against Consolidation type of 46,000 tractive power on the other portion. Therefore if there was no grade where the grade does exist, during the 12 months we would have been able to secure at least as favorable train loading as on the practically level country, and by doing that we would have saved 388,600 locomotive miles, or would have required only 51 per cent of what we actually used.

Further, the Mallet type of locomotive is practically a double engine, using a common boiler, and the cost of maintenance is practically twice as expensive as the consolidation.

Now, the locomotive miles for this same year over the district between Sacramento and Sparks was 764,000, as against train-miles of 390,000, or locomotives per train of a fraction over two, showing that we are required to use two of these Mallet engines with each train.

Now, owing to the geographical conditions we can not locate sidetracks without extremely heavy expense in the way of cutting down mountains and making shelves and one thing and another, and, besides, we can not locate sidetracks that have a greater capacity than 45 cars. Two engines on a train can handle more than 45, but are necessarily limited to 45 by the sidetrack; 45 cars will average about 3,500 ms., which is about 70 per cent of the potential efficiency of these two locomotives.

On account of the California State law specifying of what a crew shall consist under certain conditions of grade, it makes it necessary that we employ three brakemen on those trains of 45 cars, whereas on the valley lines we are only required to employ two in other service on the district, and that, too, from Rossville to Sparks, 140 miles, is an extremely long operating division; it can not be cut very well, however, on account of the geographical conditions, and as a result practically all trains in freight service now earn overtime. The fastest scheduled freight trains we have is the fruit manifest, and their time

is 14 hours and 45 minutes, and under the schedule are entitled to full crew and one hour's overtime, which represents \$3.16 for the crew.

Now, another feature of the long operating district is the Federal hours of service law, limiting the time of crews to 16 hours. We have double tracked as much of that district as we can, but the portion of the hill we can not double track without an expense of probably two or three hundred thousand dollars a mile, which is not justified, and we have not been able to do it, and in the face of the traffic and the conditions under which part of the crews tie up under the 16-hour law, in the month of November 72 of such crews tied up. The tying up of a freight crew costs approximately \$50 each time in the way of sending out of additional crews who take the trains in and paying the crew that is tied up until they reach their terminal, additional fuel consumption, etc.

Another peculiarity of the operating over the Sierra Nevada grade is the necessity of snowsheds. We have 29½ miles of snowsheds spread out over a distance of 53 miles. These sheds it was found necessary to construct to keep the line open at all on account of snow. The average snowfall in the Sierras is from 18 to 20 feet; the maximum, as the records indicate, is 26 feet. The sheds are constructed over the track to keep the line open, and cost for constructing from \$40,000 to \$80,000 a mile.

To protect these sheds through the fire season, the summer season when there is no snow on the sheds, we maintain four fire trains, having full equipment necessary for fire fighting, an engine under steam and on duty all the time. We have a signal system, telephone system, that we have located over on a mountain which is in the distance, that has a mechanical apparatus, engineer's transit to observe conditions of the sheds and notify them of fire or difficulties. The fire-alarm system indicates the information to these trains and they endeavor to put the fires out.

We have had several serious fires. Within the last year we have had two: the last one cost us \$179,000, and the two of them cost us \$202,000. Most of the fires that have taken place in the sheds have been communicated to the sheds from, for instance, fires of campers, people like that setting out fires, and not from the railroad itself, although some fires have been started in depots.

I want to call attention to what we term "smoke splitters." That is a device that is fastened in the smokestack of the engine to split the smoke and lessen the force of the exhaust against the snowsheds. All the engines in that territory are equipped, and while the cost of equipping an engine in the first place is only about \$10 apiece, the necessity existed. We recently tried to run a locomotive through there without one, and it took off \$1,500 of roof. The most serious and expensive part of the smoke splitter is the back pressure caused in the front end of the locomotive which backs up into the cylinders and reduces the efficiency of the engine. That is the most serious feature of it, but we haven't been able to get away from it.

Another feature of operating over the hills in connection with the hazardous conditions, is the positive block system. We have the staff system of operation which makes positive movements in place of the automatic block signal which may be run by, and could not be operated in there anyhow on account of the sheds, but on this sort of a mountain grade, trains must be blocked positively in a manual way. To do that we have installed 13 machines at 13 different stations. Those machines cost \$75 apiece, and at each of the stations it being necessary to keep three men on duty continuously, three in 24 hours, which represents an expense of \$2,340 a month, or approximately \$25,000 a year over that on the flat; without the hazardous grade, we would have block signals, and they would cost for maintenance, which is equivalent comparison to this operation, \$1,000 a mile a year. That is \$5,300 as against \$25,000.

Necessarily, it takes a long time for the crews to run over this long distance, and they don't make—the engineers and firemen don't make—as much money in a month as they do on the lower grade lines where they get over the road faster and stand to go out and make another trip, and it was necessary to pay the men equated miles; for instance, the engineers in freight service get an equation of 20 miles on each trip, and in passenger service 8 miles on each trip. Engine crews are paid so much per hundred miles for the run from Sacramento to Sparks, or Sparks to Sacramento, and in addition a 20 miles that they don't make, merely to increase their monthly compensation to bring it on a parity with the enginemen of the valley that make more mileage.

Of course, in the snow sections of the mountains where we are not equipped with snowsheds, it is necessary to maintain the ordinary snow fighting equip-

ment that all snow railroads keep, in the way of rotary plows, flanges, pilot and headlight plows and turning facilities.

The maintenance-of-way expenses on the hill run \$2,500 a year, compared with \$1,000 on the flat, and the unit movements of trains is extremely heavy, consequently, getting in one another's way and causing delay.

I just happened to have with me a little statement we worked up some months ago for August and September, showing, for instance, September 1 to 10, delays at meeting points, in one direction there was 81 hours and 51 minutes; another direction, 189 hours and 23 minutes; 270 hours in 10 days—\$3 and something an hour. That is just an index as to what the delays are and to which we are subjected in operating over the mountains.

Mr. SQUIRES. Have you figures as to the net loss on the investment caused by the Lucin cut-off?

Mr. McDONALD. You mean the loss on the old line?

Mr. SQUIRES. Yes.

Mr. McDONALD. One hundred and forty-three miles. I didn't figure the—no, I have no figures in dollars and cents. We only run one train a week over there now.

Mr. SQUIRES. About what would that represent in money?

Mr. McDONALD. I don't know. That was built along in the sixties. I don't know what figures were really carried on our books. Portions of it probably could have been constructed at \$25,000 a mile, and other portions of it probably a great deal more expensive—\$75,000 or \$100,000 a mile.

I believe that is all of that testimony that would be of interest.

Mr. CAMPBELL. May I ask Mr. McCarthy a question right there?

The CHAIRMAN. Yes.

Mr. CAMPBELL. That condition exists more or less in all of these hauls from the interior to the coast, does it not, on all of the lines?

Mr. MCCARTHY. The conditions are similar; yes, sir; more or less severe with all of them.

Senator POMERENE. What road are you specially speaking of?

Mr. MCCARTHY. This is the Southern Pacific, west of Ogden, Ogden to San Francisco, and the testimony from which I just read, Senator, is that of Mr. C. J. McDonald, their assistant superintendent of transportation. It was testimony introduced in another case, where a plea for a lower rate was made. They were endeavoring to prove that they could not make a lower rate, because of their difficult operating conditions, and when this tonnage passed west from Utah common points, they were relieved of that haul, and we think that we are entitled to some relief from the burden of the rate.

The CHAIRMAN. I would like to ask right there, Mr. Campbell, whether he is familiar with the topography of the country west of Spokane, between Spokane and the coast, and whether or not similar conditions to that described here exist.

Mr. CAMPBELL. Yes; I am familiar, and similar conditions do exist, possibly not to the same degree, with the exception of the S. P. & S., which runs from Spokane to Portland. The conditions there are very ideal. That road, I think, is conceded to be one of the most advantageous—

The CHAIRMAN. That is the road that follows the water grade of the Columbia River?

Mr. CAMPBELL. Follows the water grade of the Columbia River, owned jointly by the Great Northern and Northern Pacific.

The CHAIRMAN. The Great Northern main line, the Milwaukee, Northern Pacific, and Canadian Pacific—

Mr. CAMPBELL. The Canadian Pacific stops at Spokane.

The CHAIRMAN. Crosses over the Cascade Mountains, under conditions somewhat similar to these?

Mr. CAMPBELL. Yes. And the Great Northern particularly, I think, must come more nearly being about the same as described than any of the other lines. They have those immense snowsheds. They have great difficulty in the Cascade Mountains in the wintertime—greater, I think, than any of the other lines.

Mr. McCARTHY. That all is so expensive that it calls for a high scale of rates between Ogden and the Pacific coast terminals. As I stated a few moments ago, the rate on iron and steel articles of 65 cents a hundred from Pittsburgh to the Pacific coast becomes 90 cents when the same shipment is dropped at the Utah common points.

The CHAIRMAN. At Ogden?

Mr. McCARTHY. At Ogden or Salt Lake.

The CHAIRMAN. What is the distance between Ogden and the terminal?

Mr. McCARTHY. Eight hundred miles over the line just described.

Senator POMERENE. You mean the coast terminals?

Mr. McCARTHY. Yes, sir.

Senator POMERENE. Give me those rates.

Mr. McCARTHY. Sixty-five cents from Pittsburgh to the Pacific coast terminal, and 90 cents from Pittsburgh to Salt Lake City or Ogden, intermediate points, 800 miles less distant.

Senator POMERENE. What would it cost to send it from Pittsburgh to the coast, and then back to Ogden again?

Mr. McCARTHY. As I recall that rate, it is 62 cents. It would make it \$1.27.

Senator POMERENE. That is 62 cents from the coast to Ogden?

Mr. McCARTHY. Yes, sir.

Senator POMERENE. Let me ask you there, so that I will get this properly in mind. You speak generally of high rates to the coast. How far east from the coast do they have the same rates that they do on the coast?

Mr. McCARTHY. Well, they are applied at the coast terminals only.

The CHAIRMAN. You had better explain what you mean by terminals. That is a seaport.

Mr. McCARTHY. At tidewater points.

Senator POMERENE. I understood that. I do not know—I haven't in mind now the name of any city, say, a hundred miles east of the coast line, but what would their rate be?

Mr. McCARTHY. Senator, I think I have something right here that will very graphically describe just what you want.

The CHAIRMAN. Can not you answer that question generally before proceeding? In other words, do any towns east of Tacoma, Seattle, Portland, or San Francisco have terminal rates?

Mr. McCARTHY. No.

The CHAIRMAN. In other words, in answer to Senator Pomerene's question, as I understand it—I just want to get the thing straight—there is no territory east of those ports that has terminal rates at all?

Mr. McCARTHY. No; there is none. This matter I will refer to a little later, because I get the full meaning of your question now, Senator.

Senator POMERENE. Let me follow this question just a little bit further. Have you in mind any town now, say, 50 or 100 miles from the coast?

Mr. McCARTHY. Sacramento.

Senator POMERENE. Now, what would be the rate between Pittsburgh and Sacramento as compared with the rate between Pittsburgh and the coast, at the nearest terminal point to Sacramento?

Mr. McCARTHY. There is a question that I must confess I am a little hazy on, Senator. I will ask Mr. Scandrett. What became of that decision of the commission, Mr. Scandrett, with reference to depriving Sacramento of terminal rates?

Mr. SCANDRETT. That was sustained by the Supreme Court.

Mr. McCARTHY. And Sacramento at the present time does not have terminal rates?

Mr. SCANDRETT. No.

Mr. McCARTHY. They have the back-haul rate?

Mr. SCANDRETT. Yes.

Mr. McCARTHY. Which would be the 65-cent rate from Pittsburgh to San Francisco plus the local rate back from San Francisco to Sacramento.

Mr. SCANDRETT. No; that is not accurate. It would be 75 per cent of the local rate.

Senator POMERENE. How is that?

Mr. SCANDRETT. It would be the rate to San Francisco plus 75 per cent of the rate from San Francisco to Sacramento.

Senator POMERENE. It would be a violation of the long-and-short-haul principle, just the same.

Mr. SCANDRETT. Of course a higher rate than to San Francisco, if you add anything to San Francisco.

Mr. McCARTHY. Does that answer your question, Senator?

Senator POMERENE. Yes, sir; I guess so.

Mr. McCARTHY. These iron and steel article rates—this haul from the Utah common point to the Pacific coast terminal is so difficult that when the iron is produced in Utah that haul is worth 50 cents a hundred, and that is the rate from Utah to the Pacific coast. There was a time not so very long ago when the rate on iron—

Senator POMERENE. What? Fifty cents from the Utah iron works to the coast?

Mr. McCARTHY. Yes, sir.

Senator POMERENE. And 65 cents from Pittsburgh?

Mr. McCARTHY. Yes, sir.

Senator POMERENE. To the coast?

Mr. McCARTHY. To the coast; 90 cents from Pittsburgh to Utah.

Senator POMERENE. So that the railroads get, in fact, 15 cents more, or only 15 cents to haul it from Pittsburgh to Ogden?

Mr. McCARTHY. Yes, sir; now, there was a time, not so very long ago, when that scale of rates ran this way: Sixty-five cents from Pittsburgh to the Pacific coast; 55 cents from Gary, Ind., to the Pacific coast; 40 cents from Pueblo, Colo., to the Pacific coast; and there is a small town, Midvale, in Utah, right near Salt Lake, where there is a small rolling mill, and the rate from Midvale was 55 cents, just the same as from Pittsburgh, notwithstanding the fact that the 40-cent rate was carried right through Midvale—the 40-cent rate applying from Pueblo to the Pacific coast.

Mr. CAMPBELL. What is the rate from Pueblo to Reno?

Mr. McCARTHY. I think it is 75 cents.

Mr. CAMPBELL. And Reno is intermediate from Pueblo to San Francisco, and the San Francisco rate, up to December 31, was 45 cents from Pueblo and 75 cents to Reno?

Mr. McCARTHY. That is correct. Now, on that car, moving from Midvale, Utah, to the Pacific coast—to San Francisco—an 80,000-pound car, moving at 50 cents, earns the line \$400. The same lines west of Ogden haul an 80,000-pound car, moving from Pittsburgh, for \$190.88.

Senator POMERENE. Give me those figures again.

Mr. McCARTHY. The charge from Midvale, Utah, to San Francisco, on 80,000 pounds, at 50 cents, is \$400. The earnings of the lines west of Salt Lake or Ogden, on a car of the same tonnage, moving from Pittsburgh, are \$190.88, or nearly \$210 less.

The CHAIRMAN. From Pittsburgh to what point?

Mr. McCARTHY. Pittsburgh to the same destination—Pacific coast terminals.

Mr. SHAUGHNESSY. That is the division that accrues to the line west of Ogden?

Mr. McCARTHY. Yes; that is the division. It is not a local rate; but it is the proportion of the through rate that the line west of Ogden gets.

Senator POMERENE. Give me the further figures. What is the distance from Ogden to the coast?

Mr. McCARTHY. Roughly speaking, 800 miles.

Senator POMERENE. What is the distance from Pittsburgh to the coast?

Mr. SHAUGHNESSY. Two thousand seven hundred and forty-seven miles.

Senator POMERENE. The other is 800.

Mr. McCARTHY. The other is 800; yes, sir.

The CHAIRMAN. Let me ask you right there whether or not that condition is typical of the freight rate situation in the intermountain country?

Mr. McCARTHY. Well, of one phase of it. Now, I would like to touch upon a matter of eastbound rates, to show you how this thing works, and I want to call attention to one thing. Eastbound, so far as I know—there may be some few exceptions, but they are very, very rare—there is no violation of the fourth section. The rate, for example, from San Francisco to New York is the rate from San Francisco to Salt Lake City, possibly in many cases, but there is no higher rate at Salt Lake City, or at Omaha, or at Indianapolis, or at Cincinnati, or at any of the intermediate points.

Senator POMERENE. No higher than what?

Mr. McCARTHY. Higher than the rate from San Francisco to New York. What I mean is, the rate from San Francisco to Chicago or to any intermediate point would be no greater than the rate from San Francisco to New York.

Senator POMERENE. No greater than the rate to Ogden?

The CHAIRMAN. He is speaking—

Mr. McCARTHY. I am speaking particularly of transcontinental rates.

The CHAIRMAN. Let me interpolate there, please. Senator Pomerene was not here during the previous part of the testimony and,

consequently, it is somewhat difficult to follow this testimony. What this witness is calling attention to—I know I am not informed about it myself—is that this violation of the fourth section of the interstate commerce act, which prohibits the charging more for a short haul than for a long haul, is only practiced on westbound freight—from New York, Pittsburgh, etc., to the Pacific coast—whereas on freight from the Pacific coast to the East they comply with the fourth section of the interstate commerce act and do not charge more for a haul, say, from San Francisco to Chicago than they do from San Francisco to New York, as they do on westbound freight.

Senator POMERENE. That is, they are law observers coming east and law violators going west?

Mr. McCARTHY. That is it. There are exceptions. I am speaking there of the rates from the Pacific coast terminals.

Now, then, when you come into the interior, that law is violated. For example, some short time ago, here is a case in point. We made a shipment of scrap leather to J. C. Decker (Inc.), Montgomery, Pa. I looked into the rate on that before it moved, and I discovered that the rate in effect from Salt Lake City to Montgomery was in the neighborhood of \$2.05 a hundred. About 5 miles west of Salt Lake City, toward the Pacific coast, is a sidetrack called Buena Vista. Now, Buena Vista is on the same rate basis as San Francisco, on eastbound rates, but the minute you leave Buena Vista and come east into Salt Lake City, then the rate goes up, so I had this shipment billed through—had the instructions put in the bill of lading, "Use Los Angeles and Salt Lake bill of lading, route Los Angeles and Salt Lake, via Buena Vista, Utah," thus sending it away from its destination, then bringing it back, routed via the Oregon Short Line, Union Pacific, Chicago & North Western, and Pennsylvania Co. By doing that, instead of its taking the rate of \$2.05, it would take a rate of 8 cents out to Buena Vista, and then the Pacific coast terminal rate which applied from San Francisco of \$1.15, or \$1.23 through. That is the correct local tariff rate, and that compensation is applicable, and they can not exceed it, but under date of February 20 the consignee says:

In answer to your letter of the 15th, will say that we had to pay on your shipment of November 13, \$48.02, which makes a freight rate of about \$2.045 instead of \$1.23, as named by you. We wish you would please see if you can not have this matter corrected with your freight agent and a refund made to us for the difference, and see that the shipment you are making now is billed at \$1.23 through.

Now, the tariff carrying the rate of \$2.04 is a local published tariff, and the railroads will tell us, presumably as they tell the consignee, that the rate does not apply, and there is a great deal of money taken out of the pockets of shippers of the United States, just through rate applications of that kind.

Now, another matter while we are on that subject, and finishing up. Take the matter of wool. The rate on wool, as I remember it, from the Pacific coast terminal to the Atlantic seaboard is \$1 a hundred. The rate from Utah common points, as I remember, is about \$2.12.

Senator POMERENE. East?

Mr. McCARTHY. To Boston, to the same points of destination; yes, sir; to Atlantic seaboard points, the markets in the East. Now, about

30 or 35 miles west of Salt Lake, on the Salt Lake Route, there is a station called Tooele. Considerable wool is produced and is shorn there, and shipped from that point, from which the rate to Boston direct would be \$2.12. That wool is loaded in cars and shipped down to Los Angeles, at a rate of 80 cents. Now, this water competition is a very fearsome thing, it seems, but I notice that the carriers very often take tonnage right down where it can fall into the clutches of water competition.

It goes down there at 80 cents, and the wool is baled at a charge of 15 cents a hundred pounds; goes back to the point at which it was produced, where it was taken off the sheep's back, at aggregate rate of \$1.95, against a rate of \$2.12, if it were shipped direct from Boston.

Senator POMERENE. Who is the man that will defend that proposition?

Mr. MCCARTHY. I do not know, Senator. I have never heard any reasonable defense for it, but it has been done for a number of years. There is a waste of transportation facilities, it seems to me, but yet it is done. There is an economic waste, if ever there was one.

Now, we have had many cases before the Interstate Commerce Commission. Much has been said from time to time concerning the reasonableness of rates, and the carriers defend the rates at Utah common points as reasonable rates, and they say they were passed upon by the Interstate Commerce Commission. Well, I have fully as much respect for the Interstate Commerce Commission as anyone. I think they endeavor to do the right thing by all interests; but, gentlemen, I have yet to see the time when the Interstate Commerce Commission has shown any figuring covering the cost of operation of a railroad, or the cost of handling any volume of tonnage at any time, and how in the world a man could ask me to put a reasonable price upon this table that we are sitting at without my having some knowledge of the value of woods and the value of the material that went into it and the value of the labor, is beyond me. I do not see—I do not understand how the Interstate Commerce Commission can say that this rate is reasonable and that is unreasonable without making some careful investigation to ascertain what the costs of that service are.

Now, in that connection, I would like to read a short paragraph of a decision of the United States Supreme Court in the case of United States of America, Interstate Commerce Commission, and others, Nos. 136 and 162, October term, 1913, wherein they say:

We observe, moreover, that, in addition, it seems to be settled that where competitive conditions authorized carriers to lower their rates to a particular place, the right to meet the competition by lowering rates to such place was not confined to shipments made from the point of origin of the competition, but empowered all carriers in the interest of freedom of commerce to afford enlarged opportunity to shippers to enable them, if they chose to do so, of shipments to such competitive points at lower rates than their general tariff rates, a right which came aptly to be described as market competition, because the practice served to enlarge markets that develop the freedom of traffic and intercourse. It is to be observed, however, that the right thus conceded was not absolute, because its exercise was only permitted provided the rates were not so lowered as to be nonremunerative, and thereby cast an unnecessary burden upon other shippers.

Now, the carrier has always said, as I said at the outset, that the only reason for a lower rate at the more distant point, at the terminal,

is the water competition, and he stands up vigorously and strenuously claims that these rates are not wholly compensatory; they are subnormal rates. They don't provide the revenue that the railroad company is entitled to, and yet they will not say what a reasonable rate is. I never have heard a railroad man anywhere admit that any rate he had was a reasonable rate—never did in any case that I have been in. Now, the only thing that I know of that is a matter of record to-day is this statement of the Southern Pacific Co. in their application to the Interstate Commerce Commission for a release from the fourth section of the act to regulate commerce in connection with rates from the Pacific coast terminals to eastern destinations on asphaltum, barley, beans, canned goods, etc. This appears at 33 I. C. C., 483 and 484. They say:

Prior to the filing of this application an investigation was conducted by the officers of the Southern Pacific Co. to ascertain as nearly as possible the out-of-pocket costs incurred in the handling of this freight. The haul from San Francisco to Galveston is 2,160 miles, while the average haul of all freight on that line is but 220 miles. Fairly complete and detailed records are kept by the company concerning this line, showing the actual costs of operation for each 100 gross-ton miles. This gross-ton mileage is obtained by multiplying the distance traveled by each locomotive, by the cars so hauled by such locomotive. These costs are reduced to the equivalent costs per car mile for the car loading here contemplated. For the two years ending June 30, 1914, it was shown that the average cost of this division of the road for a car of the weight and loading contemplated for this traffic was in cents per car mile for wages of trainmen, engine crews, fuel, locomotive repairs, lubrication, locomotive supplies, and locomotive engine-house service, 4.97 cents; for maintenance of cars and lubrication, 1.50 cents; for loss and damage to freight, 0.57 cent; for clearing of wrecks, damaged property, and stock, and personal injuries, 0.13 cent; for yard expenses, 0.52 cent; for station expenses, wages of station agents, clerical force, station labor, and supplies, 0.30 cent; for maintenance of way inspectors, 1.05 cents; a total of 9.04 cents. The addition of these several items to the total out of pocket cost per car mile for the handling of this freight from San Francisco to Galveston of 9.04 cents.

I do not think it is necessary to read anything further in connection with that, because it applies to the case for which this was presented.

Mr. WOOD. You are not reading from the record, are you?

Mr. MCCARTHY. I am reading from a copy of an exhibit filed with the commission, but it appears at the place in the record named. Now, making a rather superficial analysis or examination of some of these rates, to give you an idea of the range of rates, take the iron and steel article list, classified generally as fifth class, and commodities of extremely heavy movement—very large volume of tonnage moving—we found in one instance not so long ago where the carriers made a rate of \$4.50 a gross ton from Gary, Ind., to Seattle, I think it was, on the rails for the Alaska Railway. That rate figures approximately 20 cents a hundred. It may be said that they could have carried the rails free for the Government if they wanted to, which is true, but I notice that they do not carry anything else free. They are not carrying our soldiers free. They are not carrying any of our materials free, and I understand they get very close to the tariff. They have at least in our section of the country been running excursions at one fare for the round trip, but if I am correctly informed the Government does not get any such rate on its soldiers that are moving.

Now, to my mind it appears that this rate was made because that 20,000 tons of material, which was the tonnage involved, was desirable at the figure at which they took it, and upon figuring that down you find that it produced 1.77 mills per ton-mile. The railroad men will tell you that when you go below 5 mills per ton-mile that you are getting on pretty thin ice. That is very nearly the cost of transportation, but you will find railroads all over this country that are hauling a great deal of freight and making considerable money at much less than 5 mills per ton-mile. Following that computation down a little further you find that the revenue per car-mile is 7.08 cents as contrasted with the 9.04 cents which the Southern Pacific Co. shows, but that is an exceptional case, and it will probably be just as well to disregard it. The next rate, though, is a rate of 40 cents on iron and steel articles to Pacific-coast terminals when for export. That rate produces 3.54 mills per ton-mile, 14.16 cents per car-mile, which is 5.07 cents above the Southern Pacific Co.'s out of pocket cost. Then the rate on exactly the same commodity for domestic consumption is 65 cents a hundred, and that produces 5.76 mills per ton-mile, as compared with the 3.54 and the 1.77 on the other shipment, and it produces car-mile earnings of 23.04 cents.

Now, on the same commodity from Chicago to Utah the railroad company charges 82 cents. They can not afford to apply that 65-cent rate at Utah, because it is a water-compelled rate; it is not a compensatory rate. It does not earn money enough; so, in consequence, for the 1,500 miles to Utah they charge 82 cents per hundredweight, or 10.84 mills per ton-mile and 43.26 cents per car-mile.

Now, I would like to have some one show—whoever can—how much this rate of 40 cents, for example, for export should be raised to produce a normal, remunerative, reasonable rate for the service performed. It is 100 per cent higher than the rate the railroads voluntarily made to get 20,000 tons of freight, but if we can not use that as a basis—if we can not use the 20-cent rate as a basis—how much above the 40-cent rate do they need to go above the 14.16 per car-mile, or above the 65-cent rate? Now, that 65-cent rate, as I said, pays 5.76 mills per ton-mile. Utah, on a carload of the same stuff, pays 10.84. If they would make a rate of 55 cents to Utah, 10 cents below the Pacific coast terminal rate—if, in view of the fact that they may be relieved of this 800 miles of this difficult haul, it would yet pay them 7.33 mills per ton-mile, against the 5.76 that they get from the coast. The rate would be lower, but their return would be higher, and it would pay them 28 cents per car-mile, or 200 per cent above the figure that the Southern Pacific Co. offers as its out-of-pocket cost. Now, it seems to me that 200 per cent above that should be ample to cover their interest charges and their dividends and maintenance and whatever other charges there may be. If they can run the railroad, if they can handle the freight for 9 cents, if they get 200 per cent above it, it really should be sufficient.

There is another feature I want to call attention to. When this tonnage moves to Utah it does not make any difference whatever other tonnage you may have, or where it originated, or where it is going, whether it is going to Wells, Nev., or to Reno, Nev., or to San Francisco, or to Hongkong, China, the lines interested could not haul it another foot. When it gets to Ogden it is at the western terminus

of the Denver & Rio Grande and the Union Pacific Railroads. If it originated in Pittsburgh the Pennsylvania has enjoyed its full haul to the Mississippi River. The lines Mississippi River to Denver have enjoyed their full haul. If it goes to Omaha the Union Pacific has had its full haul, so it can not be urged that it is short-haul business. There is not any more desirable business anywhere. Their terminal expense is certainly no greater than it is at any other destination.

Senator POMERENE. Are these rates from the East increased to Ogden, say from Pittsburgh or Chicago? From Ogden to intermediate points between Ogden and the coast?

Mr. McCARTHY. Yes, sir; they are higher, although there have been times—and, in fact, we have some cases up right now that have been in the hands of the carriers for a long time—where rates from, say, Detroit, Pittsburgh, Cincinnati to points 300 or 400 miles west of Salt Lake City are lower than the rates to Salt Lake City; and yet they defend that. At least, they won't refund the charges, although admitting that they were violating the law when they made the charges. They won't pay them back. The people are out the money; that is all.

Mr. CAMPBELL. Mr. McCarthy, may I ask you a question right there? I would like to ask you whether or not in these inter-mountain cases, when they were before the Interstate Commerce Commission, the inter-mountain section did not in each and every case demand of the commission that they require the railroads to show their out-of-pocket cost on this class of freight?

Mr. McCARTHY. I know that that has been done a number of times.

Mr. CAMPBELL. And was not the commission's answer always that the railroads here were to justify these rates? If they don't show their out of pocket, the commission might consider that they had not proven their case, but have they ever refused really upon that ground?

Mr. McCARTHY. Not to my knowledge. Now, with Judge Bartine's permission, I am going to quote him very briefly. I have taken this from the testimony in Docket 2662 (21 I. C. C., 400-427). It is Judge Bartine's cross-examination of Mr. G. W. Luce, who is now the freight traffic manager of the Southern Pacific Co., having control of the traffic over the line whose operating conditions I described:

Mr. BARTINE. Are you aware of the fact that in the case involving the constitutionality of the railroad commission law in Nevada, in Judge Farrington's Circuit Court, your company claimed that the local tariff traffic of Nevada was not profitable?

Mr. LUCE. I believe there is some such claim, but as to the real facts, I don't know. I never saw the figures, or the brief, or whatever documents you are talking about.

Mr. BARTINE. To get near the close, assume that a very large proportion of your westbound freight is carried at inadequate compensation; that a large proportion of your eastbound freight is carried at inadequate compensation, and that your local freight in Nevada is carried without any compensation at all. Will you kindly tell the commission where your company gets the money with which to pay its 6 per cent dividend on common stock, its 7 per cent on preferred stock, and accumulate \$20,000,000 surplus?

Mr. LUCE. Well, there is considerable territory which we serve which contributes to our treasury in a great deal larger proportion than Nevada; you know Nevada is sparsely populated and has not very many industrial pursuits,

except some mining, and I don't regard it as any comparison in the revenue from other cities which we traverse.

Mr. BARTINE. Am I to understand from that answer that you make the other sections which your road serves—the other communities—make up for your lack of profit at the terminals?

Mr. LUCE. We certainly must get it some place, if we do not get it out of the terminal rates.

Mr. BARTINE. If you do not get it out of the terminal rates, you must get it somewhere else?

Mr. LUCE. Yes, sir.

Mr. BARTINE. You are satisfied with that answer, are you?

Mr. LUCE. Yes, sir.

Now, then, I take it that you gentlemen are all familiar with the great Mississippi River Valley. You know something of the lines operating between Omaha and Chicago. Here is a territory of sparse population, light tonnage, and yet here is an exhibit that was introduced in the same case, 2662, which shows that the Central Pacific Co. earned \$641.04 more net per mile of road than the Chicago & North Western, the Chicago, Milwaukee & St. Paul, the Chicago, Burlington & Quincy, and the Chicago, Rock Island & Pacific Railroads combined. The North Western figures are \$2,827.74.

Mr. SCANDRETT. What was that year?

Mr. MCCARTHY. This was the last year for which the figures were separately available for the Central Pacific.

Mr. SCANDRETT. 1909, was it not?

Mr. MCCARTHY. 1909, yes; but of course the conditions surrounding all transportation companies in that year were the same, so the comparison is proper. In that year the Chicago & North Western earned net per mile of railroad \$2,827.74; the Chicago, Milwaukee & St. Paul, \$2,636.17; the Chicago, Burlington & Quincy, \$2,164.34; the Chicago, Rock Island & Pacific, \$2,027.15, a total of \$9,655.40, as compared with the earnings of the Central Pacific line of \$10,296.44, and yet it is claimed that there is no money in transcontinental terminal business. Now, that line operates only from Ogden west to—there is some small mileage north.

Senator POMERENE. How did the tonnage compare on those roads?

Mr. MCCARTHY. Well, the revenue tons per mile of road, North Western, 633,881. Well, I am unable to give you the comparison, Senator, for the reason that those figures are not shown in the Central Pacific's report at that time. We took off all the figures that were available, but that does not appear. For the other lines, it does.

Senator POMERENE. Can you give this element in it? What is the average tonnage rate in these Mississippi Valley roads that you speak of, as compared with—

Mr. MCCARTHY. Their average earnings per ton-mile?

Senator POMERENE. No; the average charge say—the gross charge? Have you the figures?

Mr. MCCARTHY. Unfortunately, that is not shown here for the Central Pacific. I have it for all of the others.

Mr. CAMBELL. That can be furnished.

Senator POMERENE. I think it would be interesting.

The CHAIRMAN. Suppose you, Mr. McCarthy, get that information and insert it in the record at this point.

Mr. MCCARTHY. I should be very glad to undertake to do that, if I can do that.

The CHAIRMAN. Mr. Campbell says it can be done.

Mr. CAMPBELL. That can be done. We have in the brief in the Spokane case and the exhibits introduced there shown the average earnings of the Great Northern and the Northern Pacific, and compared it with the average production of the rates to Spokane.

Senator POMERENE. Will you give simply one factor here? That is, you say that the per mile earnings of these intermountain roads is \$600 plus in excess of the earnings on several other roads. Now, that is a very important fact to be considered, but as shedding some light upon it, it seems to me it would help us materially if we know, not only the average tonnage per mile, but also the gross charges per mile.

Mr. CAMPBELL. I do not think that average tonnage is given in any of the reports, but the average per ton-mile earnings can be given, and then the average earnings produced by the intermediate rate, and the average earnings produced by the aggregate rate can be given.

The CHAIRMAN. It is an entirely different proposition that Senator Pomerene is asking for, and no doubt it can be obtained. The roads no doubt know how much freight they haul.

Mr. CAMPBELL. We have never been able to get them to produce it. The only thing we have ever been able to get them to produce that I know of was this tonnage moving to the intermediate points, for the four months I gave in my testimony yesterday.

Senator POMERENE. We had before this committee in a hearing of this railway legislation, a statement from the railway authorities as to the total haul of tonnage, etc. Now, they have certainly got the different items for each of these roads, otherwise they could not have given us the details.

The CHAIRMAN. They could not have gotten the figures that Mr. McCarthy gave.

Mr. SCANDRETT. That is all on file with the Interstate Commerce Commission.

The CHAIRMAN. I wish you would get it at this point in the record, so that it will be of use in connection with the statement Mr. McCarthy has made.

Mr. SHAUGHNESSY. We will be glad to get it and insert it at this point in Mr. McCarthy's testimony.

The CHAIRMAN. What Mr. Campbell spoke of is a little different.

Mr. CAMPBELL. Yes; I can see that now.

The CHAIRMAN. I would like to know it myself—the amount of tonnage per mile and the rate of charge per mile.

Mr. MCCARTHY. I want to say, Senator, as to these particular figures, I have some doubt as to them being available, because the figures of the Central Pacific here were taken from their annual report at page 28 of that year, and had they been available—

The CHAIRMAN. It undoubtedly is available, Mr. McCarthy—no question about it, because they have got certain data from which it can be calculated.

Senator POMERENE. To illustrate: After giving the ton-miles, etc., they made one statement to the effect that the business done during 1917 as compared with 1916 was 20.3 per cent more, and 1917 as

compared with 1915 was 50 per cent more, so that they certainly have all of those figures somewhere.

Mr. SHAUGHNESSY. They are available. Senator.

Senator, may I ask the witness to read at this point the comment on that earning situation west of Ogden, and illustrating what the witness has now developed by these figures here. The statement is made by Mr. Franklin K. Lane in the first decision following the amendment of the fourth section, decided in case No. 205 et al., June 22, 1911?

Mr. McCARTHY (reading):

In this case and under these applications, the commission has given thought to many considerations not touched upon in this report, some of which are suggested by the tables to be found in the Appendixes C and D, hereto, such as the reasonableness of the transcontinental rates upon commodities in and of themselves, when applied from different points of origin, and the relation of the cost of service over the Central Pacific, when delivery is made at Reno or San Francisco, and when we have considered the return per ton-mile yielded by either of these rates, it is not remarkable that other carriers from the East have pressed forward, even to their own temporary financial embarrassment, to reach these coast terminals. No other carriers in this country enjoy such long hauls upon so great a volume of high-class traffic as do these transcontinental railroads. Their fine earnings are testimony to this fact as well as to the competency of their management. If the principle that a railroad should charge what the traffic will bear is the criterion of railroad rates, no exception can be taken to the transcontinental situation, for it is masterfully designed to secure a maximum revenue and yet develop such industries and benefit such communities as the railroad in its wisdom may wish to thrive, for the growth of the Pacific coast certainly is in no small part to be credited to the discretion and experience lodged in the transcontinental traffic managers. The coast cities, those that have direct access to the commission, can not be materially injured by the policy of the law we have herein considered. They are rendered secure by the presence of the ocean, so long as they choose to avail themselves of its advantages. There is much reason in this record, too, for the belief that they have at times chosen to forego these advantages in the expectation that they would be made secure by the rail carriers and large distributing markets in the interior.

With the introduction of a policy which removes from these interior points in some degree, the disadvantage under which they have suffered with relation to eastern points of production, it will become a matter of moment to the coast cities to avail themselves fully of the ocean, as well as develop industries on the Pacific coast itself, which will compete with the industries of the East for the interior trade. That which has been done in the Middle West within a generation may certainly be accomplished upon the Pacific coast, so that there may come about a competition between rail producing markets.

Mr. WETTRICK. It was in that same decision, was it not, Mr. McCarthy, that the present order to which reference has been made was established?

Mr. McCARTHY. Yes.

Mr. WETTRICK. That is notwithstanding all of the consideration you have read, the commission came to the conclusion that a proper rate adjustment would be one where the rates from Chicago were 10 per cent higher, Pittsburgh 15 per cent higher, and from New York 25 per cent higher.

Mr. McCARTHY. Yes; and they subsequently modified that, as you know, Mr. Wettrick, but as I said earlier in my remarks, I do not think you, Mr. Wettrick, or any other advocate of the Pacific coast interests, can show where the Interstate Commerce Commission ever found any real basis for its decision; never found the cost of operation, nor went into details of that kind to get a real, sound foundation for their opinion.

Mr. WETTRICK. I simply wanted to point out that all of these things that are being stated here have been considered by the Interstate Commerce Commission, which is supposed to be an expert body, more familiar with these matters than any agency we have, and that the conclusions which it has come to, after considering all of these facts and details that are being mentioned here, have been what has also been presented to this committee.

Mr. McCARTHY. No; I don't reach the same conclusion you do from that, Mr. Wettrick, and I will illustrate it in this way by this instance; For very many years the rates to the intermountain country were practically on the basis of the rates to the coast and the rates back.

The goods did not move that way, of course, but in many cases your rate was the combination of the rate to the coast and the rate back. The larger shipper, prior to the passage of the Hepburn Act, relieved himself of that situation because of the active competition. He secured cut rates. In other words, he went out in the market for his transportation, and he bought it as cheaply as he could. By means of rebates he succeeded in holding his transportation cost down to a reasonable figure, and I call your attention to the fact, gentlemen, that prior to that time there was little said about any of these larger rate matters that have been before the commission for the last 10 years. Nothing was said of them. People were satisfied with their rates. They got the rate they felt they were entitled to, or nearly so, and it did not pay them to go to the commission. Well, when the Hepburn Act was passed and put a stop entirely to rebates, it used to be said—in fact, I have said it when I was in the railroad service myself—that if we could ever get rates where they were stable, they would be reduced to a reasonable level. That was the hope held out to the public by railroad traffic managers, and much to their surprise, and when the rates became stable by reason of the Hepburn Act, they did not come down. Naturally, the western communities went to the commission. In case 2662, referred to here, the Interstate Commerce Commission made an investigation to ascertain the effect of the order they proposed to put in upon the revenue of the carrier. They did not, so far as I know, try to find out what it cost to handle freight, but they had in mind a scale of rates which they intended to establish, but they wanted to know whether or not the establishment of those rates would ruin the railroads. They decided that they would not and they ordered them into effect. It was a reduction at Utah common points of about 35 per cent in commodity rates—carload rates. Like all other commission's orders, they would expire at the end of two years. The carriers brought in another tariff, making a marked increase in rates. Now, mind you, the first one was established after investigation of its effect upon the revenue of the carriers. My friend, Mr. Scandrett, very ably conducted this case and succeeded in fastening a higher scale of rates upon us without any investigation whatever. It was on the theory that the rates from the East to Denver and the rates from the East to Utah were too near together.

It did not give Denver sufficient territory in which to do business, so the commission listened to the plea of the railroads, and raised the rates to bring about what they called a more harmonious adjust-

ment, and there was no consideration of revenue, the cost of transportation, or anything else in it. It was just simply an arbitrary move made like that, and they naturally overlooked the fact that in bringing about this more harmonious relation or rates they put Utah up on the Reno and Spokane basis, 600 miles to the west of them.

Now, I submit that in the face of facts of that kind you can not contend always that the Interstate Commerce Commission has carefully analyzed the facts presented to it and has based its decision upon that analysis.

Just one more feature: Mr. Campbell referred to this war tax yesterday. The war tax on a carload of bolts—and I am taking into consideration only the service performed when it reaches Ogden and the car is delivered to the consignee there—the Ogden merchant pays a war tax of \$20.16 on that carload of bolts.

Senator POMERENE. You mean the shipment?

Mr. MCCARTHY. That is on the freight on the shipment.

The CHAIRMAN. Tax on the freight bill.

Mr. MCCARTHY. Tax on the freight bill.

Senator POMERENE. How much?

Mr. MCCARTHY. \$20.16. The tax on the freight bill for identical service for hauling that carload to Ogden for the Pacific coast man is \$9.87. In other words, the Government gets over 100 per cent more in taxation out of the same service performed for a man in Utah than it gets—

The CHAIRMAN (interposing). It is a percentage of taxes on the amount of the freight bill. It is a rather misleading statement of the witness when he says tax on service. It is not a tax on service. It is a tax upon the freight charge.

Mr. MCCARTHY. It is; yes.

The CHAIRMAN. What is the total amount of the excess taxes on freight bills paid by the intermountain country over and above that that they would have to pay if they got no higher rates on the same haul—the short haul—than the terminal gets?

Mr. MCCARTHY. Well, there would be no difference in that case.

Mr. SHAUGHNESSY. I would suggest that Mr. Campbell will redevelop that.

Mr. CAMPBELL. I have not my notes, but my recollection is that amounted to \$506 a day, the excess which the intermountain country has paid since the 1st of December in war taxes. Now, those figures, however, are in the record. I gave them yesterday, showing the amount of excess war tax which the intermountain section has paid since the 1st of December, figured down in years, months, and days.

Mr. MCCARTHY. I think, Senator, that is all I have to say.

Senator POMERENE. What is that tax?

Mr. MCCARTHY. Three per cent of the gross.

The CHAIRMAN. Now, Mr. Lyon, are you prepared to make a statement on the question of the effect of this system of rates upon water transportation? I understood that you were informed as to the effect of this system of so-called competitive rates by the railroads, made to meet water transportation, upon the actual water transportation. In what way have you been connected with that matter?

Mr. SCANDRETT. You commented upon the fact, Mr. McCarthy, that the commission had never been able, through investigation, to determine the actual cost of transportation of commodities from Salt Lake City. From your experience in railroad work, do you think it would be practicable for the commission, or anybody else, to ascertain the precise cost of handling all of these thousands of different commodities which are transported on our railroads?

Mr. McCARTHY. Well, I think you are carrying that to the extreme, Mr. Scandrett. I do not think it is possible to find out just exactly what is the cost of transportation of a package of needles, or a bale of hay, but I do think—in fact, I know that the carriers do have the figures showing what it costs them, for example, to transport 100 tons 1 mile.

Mr. SCANDRETT. Yes; but that is a hundred tons of their entire traffic, which as you say, is made up of needles, and hay, and coal, and a great many commodities.

Mr. McCARTHY. Which is true.

Mr. SCANDRETT. Now, all the commission can do is to exercise its judgment in determining what is a reasonable rate, is it not?

Mr. McCARTHY. That is true, but I think the commission should have something better on which to base that judgment. I don't think they should just grab a rate out of the air and say, "This looks reasonable to us." They should not say to me at Utah, a rate of 90 cents on steel is reasonable for you, because the rate to some other point is 65 cents or \$1—is higher or lower, or whatever it may be. I think there should be some basis for their judgment.

Mr. SCANDRETT. Now, when the commission made that reduction of the rates to Salt Lake City, and they made a very substantial reduction, you said, aggregating about 32 per cent, in 1910, they did have a tremendous volume of testimony before them, did they not?

Mr. McCARTHY. Yes.

Mr. SCANDRETT. And that was its judgment as to what a reasonable rate would be, based upon that testimony. Now, is it also true that when the carriers asked authority to increase those rates to Salt Lake City, the commission suspended their tariffs, did it not?

Mr. McCARTHY. Yes; for hearing only.

Mr. SCANDRETT. And the commission placed the burden where it was, under the law, upon the carrier, to show that those rates, as advanced, were reasonable, did it not?

Mr. McCARTHY. Yes, sir.

Mr. SCANDRETT. And the commission held, after a very protracted hearing, that the carriers had sustained that burden?

Mr. McCARTHY. The commission did not rule exactly that way. That was the effect of their ruling; there is no doubt about that. They did permit the railroads to advance the rates, and, as I said in my statement here this morning—

Mr. SCANDRETT. I think if that is material, probably the best thing to do is for both of us to refer to the report of the commission.

Mr. McCARTHY. I would like to explain that a little further, though. They did it to bring about a more harmonious adjustment of rates. Well, now, an adjustment of rates that takes away territory, if you view this purely from the interest of the distributor—a readjustment of rates that takes away territory from Salt Lake

City, if you please, on the east and gives it to Denver, and then takes away all of the territory west of Salt Lake by putting Salt Lake on the Reno and Spokane basis of rates, could hardly be regarded as harmonious, and I do not believe that the Interstate Commerce Commission itself or anybody else can defend that judgment in that case; and it goes without saying that there could have been no very exhaustive or careful examination of the facts made by the Interstate Commerce Commission, else they could not have reached that decision.

Mr. SCANDRETT. Now, over two years have elapsed since that time, and you have never attacked any of those rates as unreasonable since then, have you?

Mr. MCCARTHY. No; we have not. I will say for this reason, that we have had this fourth-section matter—we hope to get this law amended, and these intermountain communities have spent a great many thousands of dollars that they have to go to the people for, and in time it becomes—they wear out. The railroads apparently—well, the railroads are fighting the people with the people's money, and it is an easy matter for them, but the general public wears out.

Mr. SCANDRETT. Now, you spoke about rates from Midvale, Utah. What are the commodities that move from Midvale, Utah, to the Pacific coast?

Mr. MCCARTHY. Iron and steel.

Mr. SCANDRETT. What kind of iron and steel?

Mr. MCCARTHY. Well, it is bar iron, principally.

Mr. SCANDRETT. Now, Midvale's rate was reduced to the basis of the Minnequa rate as soon as that was called to the attention of the carriers, and as soon as they asked for the rate, was it not?

Mr. MCCARTHY. No; I do not quite understand so. It was reduced, and it has been called to their attention quite frequently.

Mr. SCANDRETT. It is a new production, a new movement, out there, is it not?

Mr. MCCARTHY. Well, in the last few years; yes.

Mr. SCANDRETT. One other thing: You referred to the fact that although there were some rates in violation of the fourth section, without the authority of the commission, that the carriers had refused to make a refund.

Now, I think you want to be fair about this. That is due to the fact that the carriers were of the opinion that they have no authority of law, since the tariff publishes the higher rate, to make a refund, is it not?

Mr. MCCARTHY. No; that is not my understanding. Mr. Scandrett. I think the carriers admit and the commission have told them that they made this charge without authority of law.

Mr. SCANDRETT. Well, I think you are in error as to that.

Mr. MCCARTHY. I think you will agree with me that the carriers have not filed an application for relief in connection with that particular—

Mr. SCANDRETT. It was an oversight.

Mr. MCCARTHY. That is what I say. Then, the charge that was made was—whether through oversight or how—whether they failed to make application for relief through oversight, whatever charge they made at the intermediate point that was greater than the rate

carried in the tariff, at the more distant point, was an illegal charge, it seems to me, and should be refunded.

Mr. SCANDRETT. Now, you compared the earnings in 1909 on the Central Pacific, with the earnings on the Burlington, Northwestern, Rock Island, and some other lines. The Central Pacific is practically a main-line proposition, is it not?

Mr. McCARTHY. It is.

Mr. SCANDRETT. And, of course, the earnings on the main line of any railroad are very materially greater than they are on branch lines, the main line being the main system through which the great volume of the traffic passes?

Mr. McCARTHY. Yes; that is true.

Mr. SCANDRETT. Now, the figures that you gave for these eastern lines, Northwestern, Rock Island, etc., was the average earnings on all of the miles of those lines, including main and branch lines, was it not?

Mr. McCARTHY. I assume that the same rule was applied to all of them—to all of the lines mentioned in that comparison.

Mr. SCANDRETT. Now, you also gave some figures on wool rates, and you gave the rates from Tooele. Will you state where Tooele is?

Mr. McCARTHY. About 35 miles south of Salt Lake City, between Salt Lake and Los Angeles.

Mr. SCANDRETT. And you stated that the rate was \$2.12 from Tooele?

Mr. McCARTHY. Something in that neighborhood, as I remember it.

Mr. SCANDRETT. To Boston?

Mr. McCARTHY. Yes.

Mr. SCANDRETT. What did you state was the rate from Tooele to Los Angeles?

Mr. McCARTHY. 80 cents.

Mr. SCANDRETT. So that on your statement the rate from Tooele to Los Angeles, plus the rate from Los Angeles to Boston, is 32 cents lower than from Tooele to Boston direct?

Mr. McCARTHY. No; I added a statement further there, Mr. Scandrett that there was a 15-cent charge for baling at Los Angeles, because of the fact that in order to take the \$1 rate it was necessary to bale the wool.

Mr. SCANDRETT. That would make the rate \$2.12 direct as against \$1.95 via Los Angeles?

Mr. McCARTHY. Yes.

Mr. SCANDRETT. Now, that rate that you gave from Tooele was the sacked wool rate, was it not?

Mr. McCARTHY. Sacked wool; yes.

Mr. SCANDRETT. And there is a lower rate on baled wool, is there not?

Mr. McCARTHY. I don't know as to that.

Mr. SCANDRETT. Do you not know that the commission prescribed an 85 per cent basis for the baled wool rate?

Mr. McCARTHY. I read that decision at the time—whether these rates were made effective at the time or not I do not know. I know all of the rates prescribed by the commission are not always published.

Mr. CAMPBELL. Mr. Scandrett, will you permit me to ask just one or two questions, just for the purpose of clearing up? You can give me the information, I guess, better than I can.

Mr. SCANDRETT. I will be glad to answer any question direct.

Mr. CAMPBELL. Have you or any other carriers in these cases ever for the purpose of showing what a reasonable rate is produced any evidence except by comparison with other rates?

Mr. SCANDRETT. I think, generally speaking, that has been the basis we have produced.

Mr. CAMPBELL. You have never analyzed a rate, showing what was the out-of-pocket charge, unless it was possibly in that southeastern case, of the Southern Pacific?

Mr. SCANDRETT. I can say to you I think I have never put in any out-of-pocket cost in any case I have had anything to do with.

Mr. CAMPBELL. And there has never been, by the carriers, any analyzation of any rate, for the purpose of showing its reasonableness, showing the out of pocket, how much it required to pay the interest on bonds, and a return upon stock?

Mr. SCANDRETT. I don't think it can be done, myself, Mr. Campbell.

Mr. CAMPBELL. But there has never been any attempt to do it, as I understand it?

Mr. SCANDRETT. So far as I know, not by these transcontinental lines.

Mr. CAMPBELL. Nor has there ever been any analyzation by the carriers, showing what any certain rate earns, or what it costs per ton-mile to move a ton of freight?

Mr. SCANDRETT. Well, we—yes; we have our cost—what it costs to move all freight.

Mr. CAMPBELL. Well, has it ever been introduced in any of these cases, in the justification of any particular rate?

Mr. SCANDRETT. Well, I don't know as to that. Of course, that is before the commission. That is in the annual report. You know what your total expenses are and you know what your total ton-miles are.

Mr. CAMPBELL. But otherwise, I mean, there has never been any analyzation of any particular rate, for the purpose of showing its reasonableness?

Mr. SCANDRETT. I should say as to that, that would involve the segregation as between freight and passenger.

Mr. SHAUGHNESSY. That has never been done, has it, Mr. Scandrett?

Mr. SCANDRETT. There have been lots of theories and formulas worked out to divide between freight and passenger.

Mr. SHAUGHNESSY. But the carriers never tried to justify any particular classification of freight, by localizing to that class the cost of its transportation or handling?

Mr. SCANDRETT. They have not on these transcontinental cases. I would not want to say what the carriers have done all over the country.

Mr. SHAUGHNESSY. I mean as a general proposition, in the matter of introducing testimony?

Mr. MCCARTHY. Mr. Scandrett, may I ask one question?

The CHAIRMAN. Yes.

Mr. McCARTHY. You mentioned the adjustment of rates in the Southeast—the fact that there are a great many violations of the fourth section there. Do you know of any case in the Southeast where the fourth section is violated with reference to the rate applying at the terminal—where at a point 800 miles inland the fourth section is violated and a higher rate is carried at the interior point?

Mr. SCANDRETT. No; I do not. I do not know that you have any of those distances in the Southeast, but I am not an authority on the Southeast.

Mr. McCARTHY. Mr. Chairman, I merely wish to amplify that statement a little bit and make a correction or two.

It has always been claimed by the carriers, as a reason for the charging of a lower rate at the Pacific coast terminal than at the interior points, that they were compelled to make that rate in order to meet water competition, and that the rate so made covered merely the out-of-pocket cost. In other words, it put no more into the treasury than it took out; that is the claim.

Utah common points, broadly speaking, are 800 miles east of San Francisco, and the haul west of Ogden to San Francisco is an extremely difficult one. By the officials of the Southern Pacific Co. it is described as being one of the most difficult in the United States, and in the record of the Senate committee I read the testimony of a Southern Pacific official, Mr. C. J. McDonald, the assistant superintendent of transportation, wherein described the line in detail from Ogden to San Francisco. He named the various items of expense which are several times greater than the expense of operating their own line in the practically level country. That is a phase of that testimony I would like to call particular attention to, because we at Utah common points, 800 miles inland, contend that any rate on any commodity that will pay the out-of-pocket cost at the Pacific coast terminal and something more, to go to the payment of the interest on bonds and dividends on stock will be a highly remunerative rate at the point 800 miles inland, when the transportation conditions of that additional haul are considered.

We further contend that while in no case and under no circumstances should the rate per hundred pounds be any higher at the Utah common points, that the rates per ton per mile should not greatly exceed the rate per ton per mile on traffic to the Pacific coast terminal.

Let me use this illustration in reference to that. The rate on iron and steel articles for export from Chicago territory to the Pacific coast terminal is 40 cents per hundredweight. There is the rate that we contend should be regarded as the rate that covers the out-of-pocket cost, but the railroad man tells you that the rate of a dollar a hundred or a dollar a half a hundred at the Pacific coast terminal only covers the out-of-pocket cost. There can not be two rates that cover the out-of-pocket cost if you consider the transportation feature only. It may be claimed that a higher rate might and should be allowed to cover the cost of insurance, but so far as the transportation feature is concerned there can only be one minimum.

This rate of 40 cents pays 3.54 mills per ton per mile. Suppose you were to grant that at the interior, while they could not exceed a 40-cent rate they might make a higher charge per ton per mile, and

they might be permitted to charge, say, 6 mills. For the 1,500 miles from Chicago to Utah common points, that would give 45 cents a hundred. That is not quite the illustration I meant to give.

Five mills would give you 750 mills for the 1,500 miles, or 37½ cents per hundred weight, as against the 40-cent rate to the Pacific coast. The rate in cents per hundred pounds would be less, but the return to the railroad company in mills per ton mile would be greater.

We feel that while they might be permitted to do that, they never under any circumstances should be permitted to make a higher charge in cents per hundred weight.

In the Senate committee hearings considerable was said about what are known as schedule C rates, rates which the carriers asked permission to establish at the Pacific coast terminals, very much lower than rates to the interior, because of the acute water competition at the coast, due to the opening of the Panama Canal.

They asked permission to establish a rate of 55 cents from Chicago, and they asked, as I recall, for permission also to establish a rate of 55 cents from Pittsburgh, but the commission would not permit that, and required a 65-cent rate.

To illustrate the conditions prior to the 15th of March, when the last order of the commission went into effect, doing away with the charge of a higher rate at the intermediate point than at the terminal, the rate on bolts, for example, to the Utah common points from Chicago was 84 cents per hundred. The 55-cent rate to the Pacific coast terminal, with a minimum of 80,000 pounds, produced \$440 in revenue, while the same car to Utah, 800 miles inland, is charged \$672.

In a case before the Interstate Commerce Commission some time ago the Southern Pacific Co., in 33 I. C. C. 483, 484, introduced an exhibit showing in support of their petition to be allowed to establish a rate of 40 cents on asphaltum, barley, beans, and canned goods, eastbound, while at the same time charging a higher rate to intermediate points, contended that the out-of-pocket cost of the handling of this traffic was 9.04 cents per car mile.

If we apply that figure to the movement of a car of bolts from Chicago to Ogden, 1,500 miles, we find that the out-of-pocket cost is \$135.60, and the difference between that and \$672, which the carrier charges, is \$536.40, and yet the carrier claims that that is a water-compelled rate, that it is water transportation that has forced down that rate, that it reflects water competition and really is not a remunerative rate. Right there I would like to have some member of this committee, if he can do it, have any railroad man state what would be a remunerative rate to the Pacific coast, or to any other point. I would like to have them say how much below a remunerative rate this 40-cent rate I referred to is, and how much it is necessary to increase that to make it a reasonable rate from their viewpoint. That has never been stated to anyone that I have ever heard.

On that same commodity take the 55-cent rate. As I said, 80,000 pounds at 55 cents is \$440. The proportion of that rate earned by the lines east of Ogden is \$329.12 and the proportion earned by the lines west is \$109.88. So that the carrier up to Ogden when he has transported a car of bolts for this merchant in San Francisco, hauls

it over the same rails between the same points for \$329.12, while he charges merchants at Utah common points \$672 for the same thing.

In reference to questions that were asked this morning concerning the length of haul, I think, by Mr. Winslow, I want to call attention to the fact that it does not make any difference what the destination of this product is, where it goes, whether it stops at Ogden or Salt Lake City, whether it goes to Reno or to California, or to Hong Kong, China, it does not make any difference, because when it leaves Ogden it is on a different railroad. They (the lines east of Ogden) have had their maximum haul and it is the most desirable business in the country, so far as I know.

This charge, or this proportion I mentioned, \$329.12, which the line from Chicago to Ogden earns, if you apply to that haul the out-of-pocket cost of 9.04 cents per car mile, you get a figure of \$135.60 to cover the cost of transportation, which leaves an amount of \$193.52 to apply to the payment of dividends and interest, and yet they tell us that the rates to Utah are not compensatory rates, that they are too low.

The statement was made by the director of traffic of the Southern Pacific, before the Senate committee that the rates to Utah are no higher than reasonable; that if any confidence is to be placed in the Interstate Commerce Commission's decision the rates to Utah, by the Interstate Commerce Commission's decision are lower than reasonable.

In view of those statements, it would be very interesting to have as high a traffic authority as Mr. Spence is, as able a traffic man as he is, to state what would be a reasonable rate, how much higher these rates must be or should be, from his viewpoint, to produce the revenue desired, and come within the bounds of reasonableness.

There is another feature of this matter I want to touch on, and that is the fact that prior to the opening of the Panama Canal, as far back as 1909, in tariff I. C. C. 865, January 1, 1909, you will find that the rate on bar iron to the Pacific coast from the Atlantic seaboard and from all points as far west as the Missouri River was 80 cents per hundredweight. The minimum was 40,000 pounds, so that a car then earned \$320.

From the Pittsburgh territory under the basis of rate proposed by the carriers in Schedule C and permitted to go in by the commission, a 65-cent rate would pay \$520. That difference in the loading is a very important factor in the returns to the carrier, and in that connection I would like to read a paragraph or two from the testimony of Mr. Kruttschnitt, the chairman of the board of the Southern Pacific Co., in the hearings before the Committee on Interstate Commerce of the Senate in reference to Senate resolution 171, page 259:

MR. KRUTTSCHNITT. The highest type of box car is one that carries 110,000 pounds. It weighs, empty, from 42,000 to about 46,000 pounds, depending on the details of construction.

SENATOR UNDERWOOD. That 42,000 pounds had to be pulled by the engine, and it took that much engine power, whether it was loaded with 100,000 pounds or 10,000 pounds, and therefore when a small load was placed in the box car you lost that much engine power for transportation?

MR. KRUTTSCHNITT. Quite right; that is the proportion of paying on live load to dead load. It was small with the small load, and as you increased the load in the car, the proportion of the live load to dead load increased very rapidly,

and I would say, incidentally, that the American Railway Association has a committee engaged at present on that very subject—that is, to design the best possible box car of ample strength, with minimum weight, because, as you very pertinently show by your question, any unnecessary dead weight pulled around, whether the car be empty or loaded, consumes power, money, and effort.

So you will see that the increase in the minimum, even though the rate was reduced, from 40,000 pounds to 80,000 pounds, has not had any adverse effect on the net income of the carriers, and my personal opinion is that an analysis of the figures would show that they made much more net money at the 55-cent rate with an 80,000-pound minimum than at the 80-cent rate with a 40,000-pound minimum.

In the course of the Senate hearing I endeavored to quote from memory some figures in reference to the rates on wool from Utah to Boston through Atlantic seaboard destinations. I discovered since Mr. Scandrett called my attention to the matter in the examination at that time that the figure which I said was around \$2 was incorrect.

The rate on wool from Salt Lake City to Boston, Mass., is \$1.744 per hundredweight; the rate from Jericho, Utah, a point farther down the line toward Los Angeles, is \$1.994; and the rate from Modena is \$2.309, and the rate from Eccles, Nev., just across the line, is \$2.544 per hundredweight.

The method of handling wool from those intermediate points is this: I used a point called Tooele in my previous testimony and I said that the rate was around \$2. In that I was mistaken. The rate is \$1.884. But I made no mistake in describing the method applied to the handling of this wool, and I will repeat it.

Take Jericho, Utah, for purposes of illustration. The rate to Boston is \$1.994, as stated. The rate from Jericho, Utah, to Los Angeles to 70 cents, and the rate from Los Angeles to Boston is \$1. At Los Angeles there is a charge of $12\frac{1}{2}$ cents per hundredweight for baling and a charge of 3 cents per hundredweight for terminal service of some kind. That makes a through rate of \$1.855 from Jericho to Boston via Los Angeles as against a rate of \$1.994 direct. When you go down the line toward Los Angeles at Eccles, Nev., the rate, made in the same way, is 70 cents to Los Angeles plus $15\frac{1}{2}$ cents for baling and terminal charges plus \$1 from Los Angeles to Boston, and that will make a rate of \$1.855, as against a direct rate of \$2.544.

In that connection, I would like to call your attention to this map, to show you where these places are. Here is Salt Lake City [indicating on map], and Eccles, Nev., is across the line, the rate being \$2.544 made through Salt Lake City and Jericho, and when the wool is taken back this way to Los Angeles [indicating on map] there is a charge of $15\frac{1}{2}$ cents for baling and terminal charges, and if it is taken back through the point of production to Boston it goes for practically 70 cents a hundred weight.

The CHAIRMAN. Without going to Los Angeles?

Mr. McCARTHY. It has to go to Los Angeles, and is baled there.

The CHAIRMAN. Do they bring it back over the same line?

Mr. McCARTHY. It comes back through the same point, passed the shearing corral, where the wool was taken off the sheep's back.

Mr. HAMILTON. Is there any difference in charge between the baled wool and the unbaled wool?

Mr. McCARTHY. Yes.

Mr. HAMILTON. Is it necessary for it to go to Los Angeles for baling?

Mr. McCARTHY. It is, under the present rate adjustment.

Mr. SCANDRITT. It is a fact, is it not, Mr. McCarthy, that there is a lower rate on baled wool from Jericho than on sack wool?

Mr. McCARTHY. There is; yes. But even if it were baled at Jericho it would pay the baling charge at Jericho, and it would still pay the 70-cent rate and the rates back in order to get the less rate to Boston. This paper I have here is an exact copy of a circular put out by the Salt Lake Route Traffic Department and is dated Los Angeles, Cal., March 20, 1917. It is showing the woolgrower how by the use of their lines and this combination rate he can beat the through rate. It makes more money for them because they get all of the 70 cents, and the 70 cents is a great deal more than their proportion of the dollar rate from Los Angeles to Boston.

There is another case where the out-of-pocket cost comes in, and the same reason is given for the existence of that rate. They say it merely pays the out-of-pocket cost, and that it does not do them any good, since they charge a rate of \$1 from Los Angeles to Boston, and that pays only the out-of-pocket cost.

Mr. SANDERS. Is the Los Angeles rate supposed to be made on the basis of water competition?

Mr. McCARTHY. Yes, sir.

Mr. SANDERS. That haul from Utah and Nevada to Los Angeles and back is simply wasted effort?

Mr. McCARTHY. Yes, sir.

Mr. SANDERS. Using cars and locomotives that should be used for something else?

Mr. McCARTHY. Yes.

Mr. SANDERS. That is, if the wool is going to Boston.

Mr. McCARTHY. Almost all of the wool in that territory is marketed in the East.

Mr. SANDERS. How far is it, in miles, from Eccles, Nev., to Los Angeles?

Mr. McCARTHY. I can not tell you the exact mileage, but my estimate of it would be about 400 miles.

Mr. SANDERS. Then it is 400 miles back, of course, and that makes 800 miles of lost motion in moving that wool?

Mr. McCARTHY. Yes, sir. I notice in reading the testimony in the investigation I quoted from that Mr. Kruttschnitt says that the average daily movement of cars is 28 miles. It does not take much figuring to find out how many days cars are used in that service unnecessarily.

Mr. HAMILTON. Is there any movement of that kind from the coast points to Boston?

Mr. McCARTHY. From that territory?

Mr. HAMILTON. From the Pacific coast.

Mr. McCARTHY. I do not believe it does in the face of a dollar rate from the Pacific coast terminals.

Following Mr. Scandritt's question in the previous hearings I took the trouble to investigate, and I have absolutely reliable information as to this condition to-day—information direct from two wool buyers, who say that during the last three years, except in

isolated cases, that all shipments of wool to the Atlantic seaboard points from Jericho, Utah, and south have moved via Los Angeles and they estimate the tonnage movement via Los Angeles from that territory in the neighborhood of 5,000,000 pounds annually.

Mr. SANDERS. If a dollar rate is a correct rate from Los Angeles to Boston, the town of Eccles, being 400 miles closer to Boston than Los Angeles, why would not the dollar rate be a fair rate from Eccles to Boston?

Mr. McCARTHY. I have always contended it would be. It pays a higher rate per ton per mile. The terminal charges are no greater.

Mr. SANDERS. If you can justify that rate from Los Angeles to Boston, why could you not justify that same rate from Eccles to Boston?

Mr. McCARTHY. It seems to me it could be justified. The terminal expense is no greater in one case than in the other, if it is as great, because I think it will not be denied that the terminal expenses at a small country station would not be as great as in a city the size of Los Angeles.

Mr. SANDERS. Is not the purpose of that rate from Los Angeles to discourage transportation by sea?

Mr. McCARTHY. That is what is claimed for it.

Mr. SANDERS. Is it not?

Mr. McCARTHY. I think it is to get that tonnage, because it adds materially to the revenue of the railroad company to take it away from the ships.

Mr. SANDERS. To take it away from the ship?

Mr. McCARTHY. Yes, sir. I am not a believer at all in the claims of the carriers that these rates pay only out of pocket cost. In the course of the Senate hearings—I was not going to mention this here, because I do not want to be in the position of going to extremes. But in the Senate hearings I mentioned a shipment of rails for the Alaska Railroad, and that movement of rails from Gary, Ind., to the North Pacific coast was at the rate of four dollars and a half per gross ton. That produced 1.77 mills per ton-mile, and it produces car-mile earnings of 7.8 cents.

When you stop to look at the claim of the Southern Pacific and this figure, there is not so much difference between 7.8 and 9.4 cents. Two railroads might vary that much in their cost.

Another thing, the carriers go about making up their cases in the way that suits themselves, and I do not know just how this figure of 9.4 was arrived at.

It may be said that these rails were hauled for the Government, and the carrier could haul them free, if it saw fit, and that is true. But I notice they are not hauling very much free for the Government in any other direction. They are not hauling troops free. They do not make very much reduced rates for soldiers. I understand in troop movements the Government pays nearly the full tariff rate. But it might also be argued that this movement for the Alaska Railroad was made in competition with land-grant railroads.

The fact is they were hauled by the Chicago, Milwaukee & St. Paul Railroad, which is not a land-grant railroad, and the only ground upon which the railroad company would go out after that tonnage is because it is desirable.

I do not claim for an instant that the rate, if it is only 1.77 mills per ton-mile for a transcontinental haul is a remunerative rate. but I do think this. that in the making of that rate the carrier must have borne in mind the fact that it is necessary for it to pay at least the out-of-pocket cost and to put a little more into the treasury than the transaction takes out of the treasury. The commission has said they must do that.

The Supreme Court of the United States has expressed itself upon that point. and I do not believe they would deliberately violate the law of the land. I think if they did not see some profit in the transaction they would not make a rate of 1.77 mills.

The CHAIRMAN. Does the out-of-pocket cost include depreciation or maintenance?

Mr. McCARTHY. Possibly I can answer that best by referring to a statement I have right here in the exhibit of the Southern Pacific Railroad Co.

The Southern Pacific Co. say:

Prior to the filing of this application an investigation was conducted by the officers of the Southern Pacific Co. to ascertain as nearly as possible the out-of-pocket costs incurred in the handling of this freight. The haul from San Francisco to Galveston is 2,160 miles, while the average haul of all freight on that line is but 220 miles. Fairly complete and detailed records are kept by the company concerning this line, showing the actual costs of operations for each 100 gross ton-miles. This gross ton-mileage is obtained by multiplying the distance traveled by each locomotive by the gross weight hauled by such locomotive. These costs are reduced to the equivalent costs per car mile for the car mile for the car loading here contemplated.

For the two years ending June 30, 1914, it was shown that the average cost of this division of the road for a car of the weight and the loading contemplated for this traffic was, as expressed, in cents per car mile, as follows: For wages of trainmen, engine crews, fuel, locomotive repairs, lubrication, locomotive supplies, and locomotive engine-house service, 4.97; for maintenance of cars and lubrication, 1.50; for loss and damage to freight, 0.57; for clearing of wrecks, damage to property and stock, and personal injuries, 0.13; for yard expenses, 0.52; for station expenses, wages, station agents, clerical force, station labor, and supplies, 0.30; for maintenance of way and structures, 1.05; making a total of 9.04.

The addition of these several items shows a total out-of-pocket cost per car mile for the handling of this freight from San Francisco to Galveston of 9.04 cents. Multiplying the distance of 2,160 miles by the cost per car mile gives \$135.26 as the out-of-pocket cost of transporting this car, or \$4.88 per net ton. During the two years ending June 30, 1914, the average steamer cost for the transportation of freight from Galveston to New York was \$2 per ton. This charge includes maintenance, fuel, unloading, loading, stockage, wages of crews, and all the expenses incident to the transportation of this freight between the ports named. It is analogous to the train expenses and station expenses of a railroad. It is not thought that the acceptance of this traffic would result in an additional cost per ton as great as \$2. Upon assumption, however, that the actual additional cost of transporting this freight from Galveston to the Atlantic seaboard is as much as \$2 per ton, it appears that the total additional cost of moving this traffic from San Francisco to New York via this route does not exceed \$6.88 per ton. The rate proposed is \$8 per ton, apparently resulting in an excess revenue above the additional cost of handling of at least \$1.12 per ton.

That rate of \$6.88 per ton would be 34.4 cents per hundredweight.

The CHAIRMAN. That includes maintenance, but it does not say anything about depreciation.

Mr. REED. Mr. Chairman, the figures which Mr. McCarthy has read—I do not know what he has read from—but the testimony offered in the case and a decision of the commission show that only

that part of the maintenance expenses which were estimated would vary with the volume of traffic as distinguished from that part of the maintenance expenses due to the action of the elements; with that as to some of the other items, such as expenses for yard and station service, and only that part estimated to be represented by the additional expense for handling long-haul traffic, are included. There was no depreciation included.

Mr. SETH MANN. What is that you were reading from, Mr. McCarthy?

Mr. McCARTHY. That was an exhibit presented by the Southern Pacific Co.

Mr. SANDERS. Depreciation was not covered?

Mr. REED. The purpose of it was to try to find out the cost of handling this business, as additional traffic has been offered, and the expense of the handling of this business, which was then going by sea, as additional traffic of the railroad.

Mr. SANDERS. Depreciation, when properly kept, absolutely is bound to include maintenance, because depreciation is charged off, and it presupposes replacements of the plant.

Mr. REED. But it is not a charge that fluctuates with the volume of traffic handled. It is a constant expense, and the purpose of this study was to undertake to separate expenses which fluctuate with the volume of business and those, such as maintenance, which would be constant anyway.

Mr. SANDERS. I understand that thoroughly, but I want to get the idea clearly in my head that depreciation does cover maintenance if the books are honestly kept.

Mr. McCARTHY. In that connection I would like to call attention to how finely spun these distinctions are when they serve certain purposes, and I reiterate my statement that I would like to have some one tell you—some traffic man—how much these specific cases of subnormal unremunerative rates should be raised to make them reasonable. That also brings to mind this thought: In the last statement of the Interstate Commerce Commission, raising the Pacific coast terminal rates to the level of the interior rate, we assume—and I think fairly so—that the commission regards those rates as being reasonable rates, or very nearly reasonable rates, at the present time. If that is so, I would like to have some one explain how it would be anything like a reasonable rate at a point 800 miles inland, and how the commission arrived at that conclusion. Yet it is contended, and it was contended in the Senate committee hearings, that the rates to Utah to-day are not as high as they should be: that they are subnormal rates.

I was speaking of the rate as 1.77 mills per ton-mile. I do not base my argument on that, but take the rate of 40 cents per hundred-weight, which produced 100 per cent more earnings per ton-mile, and I think that would be a fair basis, but even on the Pacific coast the railroad discriminates there.

They take an identical carload of the same commodity, and when it is going to the Pacific coast for domestic consumption the rate is 65 cents a hundred, or 5.76 cents per ton-mile. If they were to apply that rate at the Utah common points—the same 65-cent rate—it would pay 8.65 cents per ton-mile. But they say, "We can not afford that; you must pay 10.84. We haul it for a man in Russia for 3.54,

but that is only the out-of-pocket cost. We will make you a rate of 10.84, which is a lower rate than you are entitled to."

Mr. HAMILTON. You leave out of consideration the competition of water-hauled freight. You simply calculate the transportation from Chicago to the Pacific coast point. Why, logically, should not the rate to an intermediate point be less than the rate to the terminal point?

Mr. McCARTHY. I think it should.

Mr. HAMILTON. Then why, logically, should the rate to the intermediate point be out of proportion?

Mr. McCARTHY. It should not be, if you are considering only the haul itself, regardless of competitive conditions.

Mr. HAMILTON. I was leaving that out for the purpose of the question.

Mr. McCARTHY. I think it should not be. But in the interior we have not any desire to deprive the carriers of anything they are entitled to, and if they can haul that traffic without imposing an undue burden on the interior country, let them have it.

Mr. HAMILTON. You were citing the great difference in rates between Los Angeles and, I think you said, the city of Eccles, Nev., to Boston.

Mr. McCARTHY. That is the wool rate, eastbound.

Mr. HAMILTON. Freight eastbound?

Mr. McCARTHY. Yes, sir.

Mr. HAMILTON. What is the reason for that? How is that explained, aside from the competition of water-hauled freight?

Mr. McCARTHY. I have heard it explained a great many times.

Mr. HAMILTON. I am asking from the standpoint of desiring knowledge.

Mr. McCARTHY. I should like to be able to give you an answer to that question. I have heard it discussed a great many times, but the reasons advanced were never very impressive.

Mr. HAMILTON. Really, I should like to hear the reason for that.

Mr. McCARTHY. I have no doubt it will be given to you, and it will be given to you so much more concisely than I could do it that I would prefer that you hear it from other witnesses.

Mr. SANDERS. You do not believe you could make an argument that you could believe in?

Mr. McCARTHY. No, sir.

Mr. SANDERS. Can it be explained on any hypothesis in the world except from the water-competition hypothesis?

Mr. McCARTHY. No, sir; I think any article, whether it is transportation or anything else, that could be produced at some profit at a price of 3.54, when you pay 5.76 for it you are paying a handsome profit; and if you pay 8.65 for it you are paying an abnormal profit; and if you pay 10.84 for same thing you are being outrageously imposed upon, which is what we are doing.

There is another thing I want to call attention to in that connection, and that is this: Those through rates on iron and steel, which move in very large volume as manufactured articles, but which are regarded as low-grade commodities, are really the minimum rates, and it should not be overlooked that there is an enormous volume of much higher rated tonnage moving.

Mr. HAMILTON. I think this is a good point at which to seek from you information. I have a letter from a correspondent in my district; and by way of preface I will say that I live in a town on the Michigan Central Railroad, about 100 miles east of Chicago. This gentleman was writing to me from a small port on Lake Michigan. He says he is opposed to this bill; and in his letter he says (having reference to something he had said before):

"To give it a local application and make it clear to your mind, please note that if this proposed bill becomes a law, towns along the western end of the Michigan Central Railroad" (I will not name the towns which he mentioned) "would be limited entirely to the service of the Michigan Central Railroad. They would not be allowed to use the facilities of the interurban lines in connection with boats to Chicago, or to use the facilities of the Big Four Railroad."

That is the Cleveland, Cincinnati, Chicago & St. Louis Railroad.

Mr. McCARTHY. Yes; I am familiar with that territory.

Mr. HAMILTON (continuing). "In connection with boats to Chicago, except upon payment of a higher rate. Hence the competing carriers of the Michigan Central Railroad feel that they should be allowed to make as low a rate from Chicago to points on the Michigan Central road as are made by the Michigan Central, even though that rate is less than the rate charged for intermediate points on the boat-and-rail route."

You are familiar with the geography of that section, are you?

Mr. McCARTHY. Yes, sir.

Mr. HAMILTON. What have you to say to that? Is my correspondent right about that?

Mr. McCARTHY. Not from my viewpoint; no, sir. You will hear the same argument advanced for violations of the fourth section of the act by circuitous rail lines. They say that the longer rail lines should be permitted to charge a higher rate at an intermediate point than it does at a more distant point, where it has competition with a more direct rail line.

Well, I can not agree with that. I think, if the business is desirable, they should meet the rate, and they should not be permitted to make up that deficit, if there is one, from the people at the intermediate point.

Further, I think it will be found that there will be just as many cases of one kind as of another. Where a direct line is built—this situation was very aptly described by some one the other day, by reference to a bow, one line representing the wood and the other the string; the direct line being the string; the bow line is already in existence, and the line represented by the string is built, and you will find that in 99 cases out of 100 of that kind, the short line adopts the long-line rate. That is the way the competition is met.

And I think it is wrong in principle to permit anything of that kind; I do think it works a hardship upon the interior points.

Mr. HAMILTON. The competition with the short line could make a lesser charge?

Mr. McCARTHY. No; the reverse application of it, however, is made in these cases; and I have heard that plead before the Interstate Commerce Commission, and the Commission does grant relief.

Mr. HAMILTON. Yes.

Mr. McCARTHY. I take it from the remarks made by Commissioner Clark the other day, that it is an established policy of the Commission to grant relief in these cases.

The CHAIRMAN. To grant relief?

Mr. McCARTHY. Yes; to permit them to charge a higher rate at the intermediate point by the circuitous route than is in effect at the junction point.

The CHAIRMAN. They do not make the bow string route any cheaper than the bow route, then?

Mr. McCARTHY. No, sir.

The CHAIRMAN. They do not make that difference between the competitors at even points?

Mr. McCARTHY. No, sir; that is the idea.

Mr. WETTRICK. Well, in that case, there would not be any reason for the circuitous line to reduce its rate, would there?

Mr. McCARTHY. That was not the application I was making of that, Mr. Wettrick. It is to be supposed that the direct line will make a reasonable rate, if it reaches a point where it crosses another line, where there was formerly no competition; and if it reaches it with much less mileage, there is no reason why the rate should not be lower, because it performs less service. But as a matter of fact, my experience shows that is not the practice. The rates are graded so that they meet the long line, and do not go below that.

Mr. WETTRICK. I say, if the direct line which comes across another line simply meets the rate of the indirect line, then of course, there is no reason for that indirect line to reduce its rate at the competitive point, is there?

Mr. McCARTHY. No; but the usual practice in that case is for the long line to go before the Interstate Commerce Commission and say, "We have to meet the competition of the direct line at this point, and we have to increase the rate at the intermediate point."

Mr. WETTRICK. Well, let us straighten out that point, so that it can be understood: Unless the direct line makes a lower rate than the indirect line, as the rates are on a parity, then there is no reason for the indirect line to reduce its rate because a direct line has come along. Is that not a fact?

Mr. McCARTHY. Oh, that is true in general.

Mr. WETTRICK. Yes. Now, if the direct line, being, in fact, much shorter, should make a lower rate, then there would be a necessity for the indirect line to reduce its rate at the competitive point, and it would have to do so or let business go over the direct route. Is that not true?

Mr. McCARTHY. Yes; if there was any readjustment of rate. But, in case of readjustment, I think it would be the duty of the carrier to go before the commission and ask for relief, and ask for permission to charge a higher rate because it was a circuitous route and it could not meet the scale at all at intermediate points.

Mr. WETTRICK. This is the point that is made in that letter which has just been read: That if the indirect route is permitted to meet the rate of the direct line—unless it is permitted to meet the rate of the direct line, it will lose all of the traffic to the Michigan Central Railroad between competitive points; and it seems to me that it

must be manifest that the intermediate points on the circuitous line are not injured in the least, if the circuitous line is permitted to meet the direct competition, because, if that line is not permitted to do that it loses the traffic to the competitive point and what little it could make on that.

Mr. MANN. That traffic would move over the short line.

Mr. WETTRICK. Yes; that traffic would move over the short line.

Mr. SANDERS. Is this not the application of that bow and string proposition: Wherever the string hits the bow they get cheap rates, and where the wood goes away from the string they ask to raise those rates in the wood part of the bow, to make up for what they are going to lose where the string joins the wood?

Mr. MCCARTHY. That is it, exactly.

Mr. SANDERS. That is what everybody knows.

Mr. MCCARTHY. And Mr. Wettrick, in his question, entirely overlooks something that the Interstate Commerce Commission has said in the Nevada case, I think it is, where they said the community is entitled to something more than a reasonable rate; it is entitled to a nondiscriminatory rate; the carrier may not say, "We will give to this community a reasonable rate," and meet the full requirement of the law; it must adjust its rates, as a whole, and see to it that they effect no advantage to one community over another which does not arise necessarily out of the transportation advantages which the one has over the other.

Mr. WETTRICK. Mr. Chairman, since this discussion has come up, may I be permitted to answer the suggestion made by the gentleman in regard to this matter?

The CHAIRMAN. Well, Mr. McCarthy has the floor; it is for him to say.

Mr. WETTRICK. Mr. McCarthy, will you yield to me for a statement of a few minutes?

Mr. MCCARTHY. Certainly.

The CHAIRMAN. Are you going to take the stand now, Mr. Wettrick?

Mr. HAMILTON. This fits right in at this point.

Mr. SANDERS. Well, if he makes a statement at this time, I would like to have the right to examine him.

Mr. WETTRICK. I am willing to submit to examination immediately.

Mr. SANDERS. I object to the witness being interrupted unless this gentleman will take the stand, so that all the members of the committee can question him. If he is going to make a statement now, I may want to examine him for an hour myself.

The CHAIRMAN. Well, perhaps you had better proceed, Mr. McCarthy. Mr. Wettrick, Mr. McCarthy can go ahead now, and you can make a note of the statement you wish to make.

Mr. WETTRICK. All right, Mr. Chairman; but what I had to say fits in very well here.

Mr. HAMILTON. Mr. McCarthy, I would like to ask you a question now.

Mr. MCCARTHY. I shall be very glad to answer it.

Mr. HAMILTON. You know the situation in regard to the Michigan Central Railroad. What has been said here does not exactly describe the situation, but you understand what I am getting at?

Mr. McCARTHY. Yes.

Mr. HAMILTON. Suppose a rate originates to Kalamazoo, Mich., which is on the Michigan Central Railroad; and suppose there is an interurban line running from there to St. Joseph, Mich., which takes freight and there transships the freight by boat across Lake Michigan to Chicago, making, what I believe they are permitted to make, lesser rates on that haul partly by rail and partly by interurban line—in other words, the wooden part of the bow in the illustration you cited—they can compete successfully with the string part of the bow, in your illustration, from Kalamazoo, on the Michigan Central Railroad, to Chicago. That, I take it, is the gist of what my correspondent's letter means. He contends for the right, as I understand it, of a shipper at St. Joseph, or at any point along the line of the wooden part of the bow, to have the benefit of that competition: that is the gist of it. You have answered that fully, I take it?

Mr. McCARTHY. Well, I think I have. However, I would like to answer that a little further, in the capacity of a practical shipping man. I will say, for your information, that I am in that business. I am the traffic manager of the Salt Lake Hardware Co., one of the largest hardware concerns in the West. That is my business—the movement of their freight.

Under the conditions you describe, the two lines—the electric line and the boat—would have to make a materially lower rate in order to get any of my freight from the standard all-rail line.

Mr. HAMILTON. Well, the boat line might make a very material reduction in order to get the business, might it not?

Mr. McCARTHY. They might, although for a haul of that kind I do not see how they could.

My idea is this: It may be in terms of percentage; but knowing the rates in that territory as I do, I know that there could not be such a material difference. Their total rate would not be anything like the difference between the rail rate to Utah and the rail rate to the Pacific coast, for example. Now, in percentage it might be as great; but in cents per pound it would be so little that I do not believe many shippers would use it.

Mr. HAMILTON. For instance, take Niles, Mich. The northern terminus of the Michigan Central Railroad is St. Joseph. There they ship across the lake to Chicago. There is your competition. Niles being the point of competition on the Michigan Central and the Big Four Railroad; the lake route being, again, the wooden part of the bow in your illustration. And then, again, I suppose the shipper by water ought to be able to make the same route, and the shipper at Niles ought to have the benefit of that competition by the lake haul by the Big Four, in competition with the string on the Michigan Central Railroad?

Mr. McCARTHY. Suppose we follow that out to its logical conclusion, where will we land? Would it not wipe out the lake competition entirely?

Mr. HAMILTON. This man who writes me is engaged in lake transportation, and he wants to continue the business.

Mr. McCARTHY. That is all true enough; and he can continue it under present conditions; but followed to its logical conclusion, it will put him out of business.

Mr. HAMILTON. He says this bill will put him out of business.

Mr. WETTRICK. There is no question but what he is right.

Mr. SHAUGHNESSY. Will you explain that a little further, Mr. McCarthy, as to the effect on the Mississippi River traffic?

Mr. MCCARTHY. I have not that in mind.

Mr. SHAUGHNESSY. What I mean is to exemplify the point you have in mind. First, the boat line makes the rate low enough to get the business from the rail line, and then the rail line puts it down correspondingly low at the point of competition, while keeping the burden upon the interior points, and then the boat line goes down further, and following that the rail line goes still further at the competitive point, and after a while the rates reach such a low point that the boat line is crowded out of business.

Mr. MCCARTHY. That is my understanding of the situation, although I do not know it of my own knowledge. But the difference between the boat line and the rail line is this, that the boat line has no interior territory, no intermediate territory, to draw revenue from.

Mr. SHAUGHNESSY. Whereas the rail line can stand that character of competition while placing the burden upon the interior points. Is that not the fact?

Mr. MCCARTHY. Yes; that is the fact.

Mr. ESCH. If that is true, how do you get around that provision of section 4 of the act which says that—

Whenever a carrier by railroad shall in competition with water route or routes reduce the rates on the carriage of any species of freight to or from competitive points it shall not be permitted to increase such rates unless, after hearing by the Interstate Commerce Commission, it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

Is that provision a dead letter?

Mr. SHAUGHNESSY. Mr. Esch, we have that very well exemplified in the present order of the Interstate Commerce Commission in the transcontinental rate cases. The order was entered January 23, I think it was. The rates became effective March 15. By that order the commission did increase rates that were very substantially lower in order to meet that water competition.

Mr. MCCARTHY. Well, I do not know of anything further that I have that would be of value to this committee, except that I think that the commission should have made some effort to find out what the cost of this transportation is before granting the sweeping relief that they have granted; to find out how much these rates pay above the out-pocket cost; how much money there is available for dividends and interest.

And further than that, I notice in connection with this recent legislation—I was very glad to note that Congress did not go back five years for a basis for an average return for railroads taken over by the Government, because if they had in our country they would have encountered a dividend of 45½ per cent that the Union Pacific Railroad paid on its stock four or five years ago, and I do not know where our freight rates would land if we had to provide earnings of that kind for them.

Mr. SCANDRETT. When was that dividend paid?

Mr. MCCARTHY. The exact year I do not remember, Mr. Scandrett, but I think you do.

Mr. SCANDRETT. No; I have no recollection of any such dividend.

Mr. McCARTHY. You do not remember a 37½ per cent special dividend on the common stock and 8 per cent regular dividend?

Mr. SCANDRETT. No.

Mr. McCARTHY. Well, it is all in the records of Congress here, because I took that up with Congress myself.

Mr. HAMILTON. If the gentleman had received that dividend, it would have made an impression upon him. [Laughter.]

Mr. McCARTHY. Well, for his sake, I am sorry he did not.

Mr. HAMILTON. Mr. Chairman, if it is in order, I suggest that the gentleman who wanted to speak a few moments ago—I did not catch his name—be allowed to make his statement at this time.

Mr. WETTRICK. My name is Wettrick. I would prefer not to speak at this time, because that is not the order in which the hearings have been scheduled. I represent the commercial and industrial interests of the Northwest. I am from Seattle.

Mr. HAMILTON. All right; I thought you wanted to be heard now.

Mr. SHAUGHNESSY. If there is no objection, I would like to have Mr. Leonard Way, the traffic manager of the Railroad Commission of Idaho, appear and make his statement now.

The CHAIRMAN. All right; Mr. Way, the committee will hear you now.

STATEMENT OF MR. LEONARD WAY, RATE CLERK OF THE PUBLIC UTILITIES COMMISSION OF IDAHO.

Mr. WAY. My name is Leonard Way. I am a resident of Boise, Idaho. I also represent the State of Idaho in an official capacity, as rate clerk for the public utilities commission of that State.

I would like to make a statement regarding the rates to that State from eastern territory, reviewing the situation as briefly as I can.

Idaho's transportation field is divided into two sections, north Idaho and south Idaho.

North Idaho is crossed and served by three transcontinental lines—the Chicago, Milwaukee & St. Paul, the Great Northern, and the Northern Pacific.

Southern Idaho is crossed and served by the Oregon Short Line, which is a part of the Union Pacific system, the Oregon Short Line having over 50 per cent of all of the railway mileage in that State.

Idaho forms what might be termed a bridge that must be crossed by all transcontinental lines serving the North Pacific coast terminals, except the Canadian Pacific, which operates through Canada, and the Southern Pacific, which operates through California. In other words, all transcontinental freight destined to the North Pacific coast, except that which moves via Canadian and Southern Pacific, must cross the State of Idaho. The average distance from New York, Pittsburgh, Chicago, and Missouri River points to all points on the Oregon Short Line in southern Idaho is 1,938 miles, and 2,062 miles to points in north Idaho, the distance being 649 miles less to south Idaho and 525 miles less to north Idaho than to the Pacific coast terminals.

Prior to 1910 I worked for the Oregon Short Line in various capacities, one of which was that of revising clerk in the largest city in Idaho—Boise. It was my duty to revise all freight charges on all

freight waybills covering all freight received at Boise, to see that the charges were fully assessed in accordance with the published rates. The maximum charge on all transcontinental business at that time was the rate through to the Pacific coast, 649 miles greater distance, plus the full local rate from the coast to Boise, the freight never moving to the coast. To illustrate that: If the rate to the coast on a commodity was \$2 per hundred pounds and the class rate from the coast to Boise was \$1.50, the total rate to Boise became \$3.50, and was so charged; that is, at points 649 miles less distant than the coast, the rate was \$1.50 higher than at the coast. Later the rate from the coast to Boise was reduced to a \$1.29 scale, and the through rate became \$3.29, while the \$2 rate was charged at the coast.

This had for one of its effects the equalizing of the markets at Boise for the Pacific coast. That is, Portland, Oreg., for example, could buy in exactly the same market as the man in Boise, ship his goods to Portland for \$2 and back to Boise for \$1.50, which was exactly the same figure that the man in Boise had to pay, the carriers performing over 1,000 miles greater service for the coast than for the interior cities. When Boise attempted to distribute to the west she was in a very much worse position. She had to pay the local rate from Boise to the point west, plus \$3.50 inbound charge, while the coast paid \$2 inbound, plus a less than \$1.50 outbound charge, depending upon the scale of rates from Portland, which, of course, diminished as the distance from Portland lessened. Even when commodities were distributed from Boise to points east from Boise she was at a disadvantage, the distributing rates from Boise being higher than the additional haul rates from Portland. Illustrating: The inbound rate to Boise, \$3.50 plus, say, 43 cents to Mountain Home, a point 75 miles east of Boise, or \$3.93, against \$2 to the coast plus, say, \$1.60 Portland to Mountain Home, or \$3.60, or 33 cents in favor of Portland; again the carriers performing over 1,000 miles greater service.

The same system applied to North Idaho.

After the amendment of the fourth section of the act to regulate commerce in 1910, the carriers in 1911 filed an application for relief from the fourth section as to the rates on commodities from eastern defined territory to the Pacific coast terminals and intermediate points, seeking authority to continue the practice of making commodity rates to the Pacific coast lower than to the intermediate points.

On June 2, 1911, the commission denied the carriers authority to continue lower commodity rates from points in zone 1—that is, the Missouri River and west to the Pacific coast—than to the intermediate points, but authorized the maintenance of higher rates to the intermediate points than to the coast on traffic originating in Chicago, Pittsburgh, and New York territories by 7 per cent, 15 per cent, and 25 per cent, respectively; that is, the rate from the Missouri River to the interior should not exceed the rate to the coast, but the rates from Chicago, Pittsburgh, and New York territories might be 7 per cent, 15 per cent, and 25 per cent, respectively, higher to the interior than to the coast.

On November 9, 1911, the Commerce Court set aside the order of the commission and the old system of rate-making continued in effect.

On June 22, 1914, the Supreme Court of the United States reversed the decision of the Commerce Court and upheld the commission's order fixing the 7 per cent, 15 per cent, and 25 per cent basis. The carriers then filed with the commission a petition asking that the effective date of June 2, 1911, be extended until October 1, 1914, in order to enable the carriers to publish, file, and make effective rates to conform with the requirements of the order except on commodities contained in a list attached to the application, known as schedule C, and that as to rates on those commodities the effective date of the order be extended to January 1, 1915. The commission granted this petition and extended to October 1, 1914, the effective date of its order except as to rates on commodities in schedule C, and extended the effective date of the order as to such rates until January 1, 1915, and effective November 15, 1914, nearly four years later, the carriers filed tariffs complying with the commission's order of June 2, 1911, except on certain commodities known as schedule C, commodities which we believe constitute about 80 per cent of the transcontinental tonnage.

On January 29, 1915, the commission handed down its decision permitting the carriers to establish commodity rates from the Missouri River territory to the Pacific coast lower than to the intermediate points, provided the rates contemporaneously applicable on like traffic to intermediate points do not exceed 75 cents per 100 pounds. Thus, for example, the rate on iron and steel was made 65 cents to the Pacific coast and 75 cents to the interior from Missouri River points.

From points east of Chicago the carriers were authorized to establish certain commodity rates from Chicago, Pittsburgh, and New York territories to the Pacific coast lower than to the intermediate points, provided the rates from the Missouri River territory to the intermediate points were not exceeded by more than 15, 25, and 35 cents per 100 pounds from points in Chicago, Pittsburgh, and New York territories, respectively. That is, the carriers might establish a rate of \$1 to the Pacific coast from Missouri River, Chicago, Pittsburgh, and New York, and a rate to the interior points of \$1 from the Missouri River, \$1.15 from Chicago, \$1.25 from Pittsburgh, and \$1.35 from New York.

The less-than-carload rates being made in a similar way.

Under this tariff we find rates from New York to the coast on canned goods, 85 cents; to the interior, \$1.10. Coffee, to coast, 90 cents; to interior, \$1.15. Bags and bagging, to coast, 95 cents; to interior, \$1.20. Bathtubs, to coast, \$1.25; to interior, \$1.56. Practically all other schedule C rates being made in the same manner, lower rates to the coast than to the interior always prevailing.

On April 30, 1915, the Interstate Commerce Commission entered its order authorizing carriers to construct rates to the interior by adding to the terminal rates not more than 75 per cent of the local rate from the nearest terminal to destination, or by adding arbitraries to the terminal rates, varying with distance from such ports; such arbitraries not to be more than 75 per cent of the local rate, the aggregate not to exceed the maximum prescribed for the intermediate points, which was 15, 25, or 35 cents higher to the interior than to the coast from Chicago, Pittsburgh, and New York territories. This had for its effect the farther inland you go or the

shorter the haul, the higher the rate. Illustrating: A commodity carrying \$1.35 rate to the coast, the backhaul to La Grande, Oreg., 68 cents, total \$2.03, while the maximum to points east of La Grande, Oreg., intermediate in Idaho, is \$2.27, or 24 cents higher. Taking a commodity carrying a \$1.50 rate to the coast, with a backhaul to Spokane of 63 cents, total \$2.13, while the rate at Wallace, Idaho, east of Spokane, is \$2.27, or 14 cents higher than Spokane, creating a peak in Idaho giving preference to La Grande, Oreg., and Spokane, Wash., as well as to coast cities, the amount of this difference in each case being used by those cities in coming back over half way with shipments in competition with same goods distributed from Idaho points.

Mr. HAMILTON. Suppose you wanted a rate from Boise to Spokane on some commodity; what would that rate be?

Mr. WAY. From Boise to Spokane?

Mr. HAMILTON. From Boise to Spokane direct.

Mr. WAY. The rate would be right around \$1.29 per 100 pounds; that is, first class.

Mr. HAMILTON. Portland is your coast town?

Mr. WAY. Portland is our coast town; yes, sir.

Mr. HAMILTON. What would it be to Portland?

Mr. WAY. The same rate between the two towns.

Mr. SCANDRETT. For instance, from Portland to Spokane and Boise to Spokane; that is, you would not go to Spokane to get to Portland by that route?

Mr. HAMILTON. Take some towns on the route between Portland and Boise.

Mr. WAY. Illustrating: You might say La Grande, Oreg., which is approximately about half way.

Mr. HAMILTON. What is the rate from Boise direct to La Grande?

Mr. WAY. The rate from Boise direct to La Grande? I do not recall the exact figures, but, to illustrate, will say 65 cents.

Mr. HAMILTON. What would be the rate to Portland?

Mr. WAY. From Portland back to that point would be less than that figure, speaking of the halfway point.

Mr. HAMILTON. Suppose you wanted to ship from Boise direct to Portland. What would that rate be?

Mr. WAY. That the record may be clear, and for the benefit of those not familiar with the geographical location of Boise with regard to Spokane and Portland, would like to say that Boise is intermediate to Portland but not intermediate to Spokane, in the sense of transcontinental traffic. Boise is located on the Union Pacific lines in South Idaho, while Spokane is located practically on the Washington-North Idaho State line, and transcontinental business never crosses both north and south Idaho on its way to the coast. It either routes northern lines, crossing north Idaho, or via the Union Pacific, crossing south Idaho.

The rate from Boise to Portland direct, first class, would be on the \$1.29 scale. In other words, if a shipment originating in the eastern defined territory carried \$2 to the coast the rate would be \$2 to the coast plus the local rate from the coast back to that inland town, which might be one-half of \$1.29 for a point one-half the distance between Portland and Boise, which would make the rate via Portland \$2.64½, assuming 64½ cents to be the rate to the inland town.

Now, the rate via Boise would be made \$2 to the coast plus \$1.29 from the coast to Boise, under the old system, making \$3.29 plus 64½ cents to the halfway point, making the through rate via Boise \$3.93½, or \$1.29 more than the rate via Portland, the carriers performing nearly 1,000 miles less service on shipments via Boise or interior towns, for which they charged \$1.29 more.

Mr. SCANDRETT. That is not the adjustment now?

Mr. WAY. That is not the adjustment now, but that is the adjustment that was used under the old conditions, and which may be re-established in water competition under the provisions of the present fourth section.

Mr. SCANDRETT. That was not the condition immediately prior to the new rates that went into effect on the 15th of March?

Mr. WAY. Not immediately prior to that time.

Mr. SCANDRETT. That had not been the condition since 1914, had it?

Mr. WAY. The last part of 1914 or the first part of 1915 that adjustment was changed when the decision of the Supreme Court was rendered on the order of June 24 issued by the Interstate Commerce Commission.

Mr. HAMILTON. In short, what did that decide?

Mr. WAY. In short, that decided that the rate to the inland towns might be 7, 15, or 25 per cent higher than the rates to the coast when shipments originated at Chicago, Pittsburgh, or New York.

Mr. HAMILTON. What facts did they take into consideration in arriving at that conclusion?

Mr. WAY. I think, perhaps, there are others who might be able to explain that to your satisfaction and will explain it better than I will be able to do. I think that will be gone into fully.

Mr. HAMILTON. You seem to me to state a proposition very clearly.

Mr. WAY. My understanding is that water competition has always been taken into consideration in making the decisions in the different cases.

Mr. HAMILTON. Did I understand you to say that the old rate prior to 1914 on the direct shipment Boise to La Grande was as high as the cost of transportation would be from Boise to Portland and then back to La Grande?

Mr. WAY. No. I was referring, Mr. Hamilton, to the rates on commodities which originated in the East and moved to Boise or to Portland and were redistributed to La Grande; La Grande, Oreg., is between Boise and Portland, I assumed about half way, and about the same rate from Boise to La Grande as applies from Portland to La Grande.

Mr. HAMILTON. How far east did that rule apply? To points east of Chicago, say?

Mr. WAY. Yes; that applied through to the Atlantic coast.

Mr. HAMILTON. Where did the line of demarkation start?

Mr. WAY. That extended back to the—

Mr. HAMILTON (interposing). The Mississippi River?

Mr. WAY. Back, I was going to say, to the Idaho-Wyoming State line; perhaps east of that.

Mr. HAMILTON. So that all freight originating east, you would say east of Idaho?

Mr. WAY. East of Missouri River.

Mr. HAMILTON. East of Missouri River would take a rate as low to an intermediate point as the sum of the rate from the point of shipment to the coast and return?

Mr. WAY. Yes, sir. Of course if the local rate from the Missouri River to that inland point was less than the rate from the Missouri River to the coast plus the coast back to that point, then the local rate would apply, and that line was some place around the Wyoming-Idaho State line.

Mr. SANDERS. Suppose you start at Chicago; then you can consider the matter very clearly.

Mr. WAY. Taking a rate of \$2 on shipment from Chicago to the Pacific coast, under the old condition the rate was \$1.29 back to Boise, and was about \$1.38 to Pocatello. Perhaps a little more to Pocatello; I can not recall those figures. That would make a rate of \$3.38 at Pocatello if the \$1.38 was correct. That rate would apply at Pocatello if the local Chicago to Pocatello rate was not less than that amount. If the local rate was more, the coast combination would be used.

Mr. HAMILTON. Suppose a shipment was destined to your own city from Chicago?

Mr. WAY. I do not remember what was the old first-class rate from Chicago, but think it was about \$3.50 from Chicago.

Mr. HAMILTON. And from Chicago to Portland it was how much? \$2 you just said.

Mr. SCANDRETT. \$3 on the class rate?

Mr. WAY. That was the adjusted rate.

Mr. SCANDRETT. No; that was the old rate. Pacific coast terminal first class, at the time the rate was \$3.50 to Boise on first class.

Mr. SANDERS. Then it was 50 cents more to Boise than it was to Portland?

Mr. SCANDRETT. That has been changed and it is now less to Boise than to Portland, and that has been true for five years.

Mr. WAY. That has been true since about 1912. The back haul was not applied to as great an extent on shipments originating at Chicago as it was on shipments originating east of Chicago. It was almost invariably true on shipments originating in New York and Atlantic seaboard States. Mr. Scandrett stated that the first-class rate to Pacific Coast was \$3, while the first class to Boise was \$3.50, but to the coast there were a great many first-class commodities carried at rates considerably under \$3, say \$2 for example. The difference between the rate at the coast and the interior, \$1.50, would carry the shipment back to the interior, and the line of demarkation was at that point where the coast combination met the local combination.

Mr. SANDERS. Can you ship goods out of Chicago to Boise cheaper than you can take them through to Portland?

Mr. WAY. Under the present arrangement you can. Under the decision that went into effect March 15, rates to the interior are no higher than to the coast, but that is the first time in the history of transcontinental rates.

Mr. SANDERS. No higher?

Mr. WAY. No higher.

Mr. SANDERS. Are they lower?

Mr. WAY. On some commodities they are lower. On other commodities they are flattened out and exactly the same.

Mr. SANDERS. That is since the order of March 15?

Mr. WAY. That is since the order of March 15; yes, sir.

Mr. SANDERS. Before that it was higher?

Mr. WAY. Yes, sir. Before that the rates to the interior were higher.

Mr. HAMILTON. You have not read it, and I want to know what specifically the order states. It takes into consideration canal traffic?

Mr. SANDERS. It does; and as soon as the matter is cleared out the railroads are given a right to go back and ask for a lower rate.

Mr. HAMILTON. They have to get it by request to the Interstate Commerce Commission?

Mr. WAY. Yes, sir; they have to make application to the commission. The last order in these cases extends such an invitation.

Mr. HAMILTON. So that the order stands until changed on the opening of the Panama Canal traffic?

Mr. WAY. There is no application to make until water competition returns.

Mr. WOOD. And before this last order went into effect, March 15, on all classes and on a good many commodities the rates had been lower to Boise since 1914 than to the coast?

Mr. WAY. That is true as to class rates and on some few commodities, but not on carload commodities moving in large volume. Heavy commodities coming from eastern defined points were generally lower to the coast than to the interior.

Mr. WAY (continuing statement). On June 5, 1916, the commission, by its order effective September 18, 1916, rescinded its former order in so far as it afforded to the carriers any greater relief from the provisions of the fourth section on schedule C articles than is afforded by fourth section order 124 of April 29, 1916, respecting what are designated as schedule B commodities.

Mr. HAMILTON. Now, some of the members of the committee know all about this. I do not; and when you refer to schedule C and schedule B, will you interpret it into English I can understand?

Mr. WAY. I will try to do that.

Mr. SHAUGHNESSY. I would like to state that the record which we have reintroduced and which was made before the Senate committee, covers that in great detail and particularity.

Mr. HAMILTON. I did not know but as he went along he could, in a rough way, tell what these schedules comprehended.

Mr. SHAUGHNESSY. I just gave you that as a matter of information.

The CHAIRMAN. Could you not say what schedules A, B, and C comprehend?

Mr. WAY. Schedule A rates are the rates on commodities upon which the commission found there was no competition, and the rates to the interior are no higher than to the Pacific coast.

Schedule B contained those commodities which carried 7, 15, and 25 per cent higher rates to the interior than to the Pacific coast.

Mr. HAMILTON. On account of water competition?

Mr. WAY. Yes; on account of water competition. And schedule C commodities are those commodities on which the commission found

there was more competition and gave the carriers greater relief, that relief being 15, 25, and 35 cents per hundred pounds less to the coast than to the interior.

Mr. HAMILTON. That is the last rate?

Mr. WAY. That is the one just prior to March 15.

Mr. HAMILTON. That is the one the order of March 15 obliterates?

Mr. WAY. Flattens them all out.

Mr. HAMILTON. Obliterates these distinctions?

Mr. WAY. Under the last order there are no rates from the eastern defined points to interior that are higher than those to the coast, but understand there are some lower rates to the coast than to the interior from the southeastern territory.

Mr. SANDERS. That last order is owing to the interruption of water competition through the canal?

Mr. WAY. Yes, sir.

Mr. SANDERS. And when that competition is restored then the open invitation, as I understand it, is for the railroads to come back and get the rates readjusted so as to drive the water carriers out again?

Mr. HAMILTON. My friend the governor refers to it as "open invitation." As a matter of fact it becomes necessary, in order to get rates restored, to make application to the Interstate Commerce Commission. That is about what it means; it is not really an invitation.

Mr. SHAUGHNESSY. We read into the record an excerpt from the decision of the Interstate Commerce Commission, specifically inviting the carriers to come back and make application for this relief when competition is reestablished.

Mr. WAY (continuing statement). The carriers, pursuant to these orders, filed new tariffs effective September 1, 1916, containing rates purporting to be in accordance with the requirements of the order. New tariffs contained many advanced rates to Pacific coast on schedule C items. Protests were filed by coast cities and new tariffs were suspended until December 30, 1916.

June 30, 1917, the commission found water competition negligible and that rates from eastern defined territory to intermediate points higher than coast now justified. Present rates on certain commodities unreasonably low and have not been induced by water competition. Present rates on schedules B and C commodities unreasonably low from territories east of Missouri River to Pacific coast terminals.

By an amendment to section 15 of the act to regulate commerce, approved August, 1917, it is provided that until January 1, 1920, it shall be unlawful to file increased interstate rates without first having secured from the commission approval thereof. Under this requirement carriers filed, September 21, 1917, application to increase rates to Pacific coast and some rates to intermediate points.

January 21, 1918, the commission permitted such filing, and tariffs filed March 15, 1918, conforming to the fourth section, and for the first time in 28 years have the commission's orders respecting the transcontinental rates been fully complied with. (See J. B. Campbell's testimony before the Senate committee.)

These transcontinental rates apply from thousands of points of origin to thousands of points of destination, upon thousands of commodities, and it would be impossible to treat the matters in detail. I have attempted to give, in a general way, a detailed history of the

transcontinental rates from their inception down to date, showing the varying adjustments, the dates of change and causes, the instability of rates under the present law, and from that statement it will be seen that the rates to the interior cities, namely, the rail rates, have always, up to March 15 of this year, been higher than to the coast, and upon the return of water competition, that the commission will grant lower rates to the coast than to the interior is sounded in Commissioner Harlan's dissenting opinion, in which he said:

Unless the economic advantage of being terminals for an all-water route from coast to coast be taken away from the Pacific coast cities by some upheaval of nature or by legislative action, they apparently will have in the future what they have always had in the past, namely, lower all-rail rates on commerce that can and does freely move by water than the less-distant intermediate cities, in the nature of things, may expect to have.

Mr. HAMILTON. Would this legislation take away from the commission all power to make any discrimination on account of water haul?

Mr. WAY. Yes, sir.

Mr. HAMILTON. It takes away any discretion that may be lodged in the Interstate Commerce Commission?

Mr. WAY. That is my understanding.

The CHAIRMAN. The fourth section of the proviso is stricken out.

Mr. WAY. The discretionary power has been with the commission and the exception has been made the rule.

Mr. HAMILTON. If this question is an improper one, strike it out of the record. The public has had a good deal of confidence, I think I may say, in the fairness and sense of justice of the Interstate Commerce Commission. I judge that you think it would be unsafe to leave discretion with the Interstate Commerce Commission, so far as this particular phase of transportation is concerned.

Mr. WAY. Do not understand me to say, Mr. Hamilton, that we are criticizing the Interstate Commerce Commission in any respect whatsoever.

Mr. HAMILTON. Oh, no; I understand.

Mr. WAY. But this, we believe, is a question of policy, to be decided by Congress. Definite rules should be made for the commission to follow.

Mr. HAMILTON. I remember, for illustration, reading in an article sent out from Spokane, I think it was, that they were in process of constructing a steel building there, and the freight cost of the steel used in that construction was much greater than it ought to have been by reason of this additional freight back from the coast terminal to Spokane.

Mr. WAY. That is undoubtedly true. Same conditions existed in all of the interior territory prior to March 15, applying to a more or less degree upon practically all commodities.

Mr. HAMILTON. And it figured up into the thousands, and I suppose that condition has been very prevalent. Of course it has been prevalent. Now that has been done away with by the order of the commission. I assume, then, the question is whether the commission will permit a recurrence of a condition which to the lay mind is utterly unfair.

Mr. WAY. That is exactly what we fear. The invitation held out by the commission to the railroads to make application for lower

rates when water competition returns and Mr. Harlan's dissenting opinion substantiate that fear.

Mr. HAMILTON. If it is necessary to have discriminations in favor of a coast city, then the question is whether the discrimination should be large or small. Apparently it has been too large, or was under the old conditions. But having in mind the fairness and honesty of purpose of the Interstate Commerce Commission, the question is raised as to whether we may not trust them; and, in the last analysis, I suppose that is where this bill stands.

Mr. SHAUGHNESSY. The part we make, Mr. Hamilton, is that there is no rule in the present fourth section of the act of Congress that puts any limitation upon the discretion which the Interstate Commerce Commission may exercise; and viewed by our experience in the past, that has been a very fluctuating experience. The rates have fluctuated upward and downward. As I said this morning, the differential is against us and has been against us from time to time; and that, again, following the reestablishment of water competition through the Panama Canal, following the close of the war, we will have to meet, and at that time we will again be confronted with these fluctuating differentials or arbitraries against us. With the fluctuating system of transportation charges which enter into our very life, into everything we do, into every enterprise that we undertake to establish and all of the business we try to do in the way of developing our great resources, we can not do anything unless we do have some stability in rates, and the only way we can get this stability is by the methods we are now pursuing here before Congress in the passage of an absolute long-and-short-haul bill.

Mr. WINSLOW. Why do you not go to the director general?

Mr. SHAUGHNESSY. That, again, is an indefinite matter.

Mr. WINSLOW. I wish we could state it was definite, but we can not, unfortunately. It is only a period of 20 months after the close of the war.

Mr. SHAUGHNESSY. Then, again, the property goes back into the hands of the private owners. Then, what is the next step? The next step is for the Interstate Commerce Commission again to meet this competition on the Pacific coast, and we are confronted again then with a new touch of fluctuating rates. We can not get any security by appearing before the President.

Mr. HAMILTON. I am not suggesting it.

Mr. SHAUGHNESSY. It might appeal to him or the director general. The director has already said he will not stand for it, and that he has instructed the Interstate Commerce Commission to level up all these short-haul rates.

Mr. WINSLOW. Then why come to us?

Mr. SHAUGHNESSY. That is absolutely indefinite, as I said before. I, perhaps, gentlemen, do not make myself clear, because, as I view it, it is a very important matter, for the reason that we are not in the hands of the director general or the Government in permanent operation. It is only a temporary operation during the period of the war and for a stated period thereafter. Following that period the railroads go back into the hands of their private owners, and then again we are confronted with the administration of the present fourth section, and possibly we will have to go through the same routine we have been through for a number of years heretofore.

Mr. WINSLOW. If we pass this bill, could not the President and the Interstate Commerce Commission make any rates they want to, just the same?

Mr. SHAUGHNESSY. Yes; they can. But we want the security of a positive declaration by Congress on this question. We do not want to be held up here with action by the director general, if you please, for the next two or three years or whatever the period of the war may be. That influence is not good. But we can not go out and solicit capital on that proposition. That is absolutely insecure. We want a permanent, definite declaration by Congress that the law or the public policy of this country for the future is going to be thus and so.

Mr. WINSLOW. For new enterprises?

Mr. SHAUGHNESSY. Not for new enterprises, but as enabling each community to go out and make its investment in capital and to develop its resources and industries in proportion as its resources and energy will justify. We can not do anything of that kind unless we have an equal opportunity in so far as rail charges are concerned, and that is why we are appearing before Congress at this time.

Mr. HAMILTON. I want to say, Mr. Chairman, so far as I am concerned I get more information by some such little exchanges as these than I do from the uninterrupted statement of the witness.

The CHAIRMAN. You are undoubtedly correct.

Mr. WAY. In all of these cases we have been told by the carriers that it was better for the interior to have rail lines handle freight to the coast which paid something over an "out-of-pocket cost"; that something to be applied on the fixed charges, which would help reduce the burden of the interior. In regard to this "out-of-pocket cost" I would like to refer to Mr. McCarthy's statement before this committee to-day and at San Francisco, shown on pages 1624 to 1626, joint resolution No. 25, showing rates ranging from 1.77 mills per ton-mile at the coast to 10.84 mills per ton-mile at the interior, and inquire what is the "out-of-pocket cost." If 1.77 mills pays the "out-of-pocket cost" and something more at the coast, 10.84 mills at the interior is certainly all out of proportion. To show that the roads operating in Idaho are prosperous the reports of the carriers, ended December 30, 1916, with all of the increased cost of operation, show the average earnings for the Chicago, Milwaukee & St. Paul; Great Northern; Northern Pacific; and Oregon Short Line for rail operations were 6.26 per cent net, the Oregon Short Line earnings being 10.36 per cent net.

These same roads had \$619,201,215 invested in outside operations, upon which they received a return of 2.88 per cent, which shows railway operations paid very much higher returns than outside operations.

These roads, upon their total investment, both operating and non-operating, earned a return of 5.37 per cent, and upon their funded debt paid 4.19 per cent. Deducting the funded debt from the total earnings, we have a return of 8.98 per cent for the capital stock. The Oregon Short Line paid 11.42 per cent and the Northern Pacific 10.87 per cent.

I believe that is all that I have to say. Other witnesses following will detail the effects of the present arrangement upon the interior.

Mr. ESCH. It is a fact that the Interstate Commerce Commission since 1892, in the matter of rate structure, has given away to water competition? I understood you to say your purpose in making the long haul absolute is to eliminate water competition as a factor in the rate structure.

Mr. WAY. That is so far as rates may be higher to the intermountain territory than to the Pacific coast.

Mr. ESCH. Then you would give a local application to your own region, and you would decide that this competition is not to be considered as an element in rate making?

Mr. WAY. I do not know as I get your question.

Mr. ESCH. You say that the commissioners always considered the water competition as an element in determining the rates?

Mr. WAY. Yes.

Mr. ESCH. And especially with respect to the Pacific coast terminals, and you desire to have the long and short haul made absolute in order that water competition may no longer be reflected in the rate structure?

Mr. WAY. Yes.

Mr. ESCH. If that be true, the application of that principle must be made as wide as the country, and can not be confined to the intermountain region. The deduction, therefore, of this bill is that there would be, upon that basis, water competition should hereafter be eliminated throughout the United States in the making of rates?

Mr. WAY. I do not agree that water competition should be the basis for freight rates.

We have not objected to having the same rate at the interior as applies at the coast if necessary to meet water competition, but the rates at the interior should never be higher than at the terminal.

I believe that low rail rates tend to drive the boats out of business rather than put them in.

I do not think that either water or rail competition should be made the excuse for low rates at terminals and higher rates at intermediate points, compelling the interior to pay more than their proportion of transportation costs in order that the competitive rail or water line at terminal may be driven out of business while the terminal point grows prosperous, benefiting by the struggle between the lines for business by reducing rates.

The CHAIRMAN. I suppose you mean that each transportation facility should have a full opportunity to do all the business that its natural advantages enable it to do?

Mr. WAY. Yes, sir.

The CHAIRMAN. In other words, that the water transportation is essentially cheaper, and therefore, it being essentially cheaper, it is better for the country that it do all it can do, because it does its business at a profit, even at much lower rates than rail transportation?

Mr. WAY. That is my idea exactly.

The CHAIRMAN. And rail transportation should not do part of its business profitably and fail to make a profit on the balance simply to take a portion of the business away from the water carriers?

Mr. WAY. Yes, sir; that is my idea.

The CHAIRMAN. I am much obliged to you.

Statement showing railway operations for lines engaged in transcontinental trade in State of Idaho.

	Investment in road and equipment.	Net railway operating income.	Rate of return.
			<i>Per cent.</i>
Northern Pacific.....	\$499,450,934	\$33,976,675	6.94
Great Northern.....	394,217,921	29,231,536	7.42
Chicago, Milwaukee & St. Paul.....	592,924,679	29,759,796	5.02
Oregon Short Line.....	114,404,847	11,857,840	10.36
Oregon-Washington R. R. & Navigation Co.....	158,221,913	4,713,488	2.98
Idaho roads.....	1,749,220,294	109,539,335	6.26
Union Pacific.....	296,420,911	28,289,050	9.64
Union Pacific system.....	587,466,150	45,482,587	7.74

	Investment in other than operating property.	Income from other than operating property.	Rate of return.
			<i>Per cent.</i>
Northern Pacific.....	\$182,168,672	\$5,292,243	2.91
Great Northern.....	229,483,994	5,823,783	2.54
Chicago, Milwaukee & St. Paul.....	38,345,151	2,076,867	5.42
Oregon Short Line.....	166,262,813	4,839,895	2.91
Oregon-Washington R. R. & Navigation Co.....	2,940,585	113,742	3.87
Idaho roads.....	619,201,215	17,919,046	2.88
Union Pacific.....	326,252,445	18,971,213	5.81
Union Pacific system.....	495,499,850	23,700,190	4.78

	Total investment.	Interest paid on current and unfunded debt.	Income from all property.	Rate of return.
				<i>Per ct.</i>
Northern Pacific.....	\$671,619,606	\$32,012	\$39,238,906	5.84
Great Northern.....	623,701,915	19,081	35,036,238	5.61
Chicago, Milwaukee & St. Paul.....	631,269,830	31,510	31,805,153	5.08
Oregon Short Line.....	280,667,660	3,312	16,694,423	5.94
Oregon-Washington R. R. & Navigation Co.....	161,162,498	84,164	4,515,582	2.8
Idaho roads.....	2,368,421,509	170,079	127,288,302	5.37
Union Pacific.....	622,673,356	34,234	47,226,029	7.58
Union Pacific system.....	1,082,966,000	137,934	69,044,843	6.37

	Total long term of funded debt.	Interest on long-term debt.	Rate of return.
			<i>Per cent.</i>
Northern Pacific.....	\$313,564,500	\$12,288,896	3.92
Great Northern.....	250,840,015	10,746,193	4.28
Chicago, Milwaukee & St. Paul.....	358,070,255	15,595,311	4.38
Oregon Short Line.....	120,851,000	5,276,547	4.37
Oregon-Washington R. R. & Navigation Co.....	104,895,922	4,218,410	4.02
Idaho roads.....	1,146,221,692	48,125,357	4.19
Union Pacific.....	195,293,317	7,822,436	4.01
Union Pacific system.....	425,040,239	17,477,393	4.11

	Capital stock.	Net income earned for capital stock.	Rate of return.
			<i>Per cent.</i>
Northern Pacific.....	\$248,000,000	\$26,348,010	10.87
Great Northern.....	249,475,810	24,290,045	9.74
Chicago, Milwaukee & St. Paul.....	233,251,800	16,209,842	6.95
Oregon Short Line.....	100,000,000	11,417,876	11.42
Oregon-Washington R. R. & Navigation Co.....	50,000,000	297,172	.59
Idaho roads.....	880,727,610	79,162,945	8.98
Union Pacific.....	321,835,100	39,403,593	12.24
Union Pacific system.....	485,434,500	51,567,450	10.62

¹ Indicates deficit.

STATEMENT OF MR. J. B. CAMPBELL, SPOKANE, WASH.

Mr. CAMPBELL. My name is J. B. Campbell, and my address is 1124 Old National Bank Building, Spokane, Wash. I am now and for 14 years last past have been attorney for the Spokane Merchants' Association of Spokane, Wash., and am appearing here as the representative of the said Spokane Merchants' Association and the chamber of commerce of the city of Spokane.

I think Spokane can rightfully claim to be the pioneer in fighting against the charging of a greater rate for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer haul. I think that the early history of Spokane's fight would not be of interest, but I believe it will be of interest to recount her experiences under the fourth section of the act to regulate commerce as amended June 18, 1910.

I was a member of the committee from Spokane that appeared before the various committees of Congress having charge of the amendment, and I believe that I have a pretty clear idea of what Congress meant by the amendment. I firmly believe that it was intended that the amendment should be an absolute prohibition except in special cases; in other words, that the proviso, which reads as follows:

Provided, however. That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for the longer than for the shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

meant exactly what it says—that in special cases, and special cases only, could such a privilege be granted. I do not believe that it contemplated that such wholesale grants should be given as were given. It has been said, I understand, by witnesses who appeared before the joint committee in San Francisco last November that there had been granted under this proviso some 10,000 departures from the rigid prohibition of the fourth section.

Since the enactment of this amendment Spokane has obtained from the commission several favorable decisions, but not until March 15, 1918, were any of the many decisions put into effect in its entirety. On February 9, 1909, and later, on June 7, 1910, the Interstate Commerce Commission found reasonable rates to Spokane. These rates are known as the "tentative rates." Before these rates could be put into effect the fourth section of the act to regulate commerce was amended as it now reads, and the Interstate Commerce Commission on June 22, 1911, in the case of the city of Spokane *v.* Northern Pacific Railway et al., granted the carriers relief under the proviso upon a percentage basis; that is to say, they created certain zones. Zone 1 comprised that territory known as the Missouri River territory, and from that zone the carriers were not allowed to charge more to Spokane than to Pacific coast terminals. Zone 2 comprised what is known as the Chicago common point territory, and from that zone the carriers were allowed to charge Spokane 7 per cent more than to the Pacific coast terminals. Zone 3 comprised that territory known as Buffalo-Pittsburgh territory, and from that zone the carriers were permitted to charge Spokane 15 per cent more than to Pacific coast

terminals. Zone 4 comprised what is known as the New York territory, and from that zone the carriers were permitted to charge Spokane 25 per cent more than to Pacific coast terminals.

That decision of June 22, 1911, while not entirely satisfactory to Spokane, was so much better than we had ever had we joined with the Interstate Commerce Commission and the Government in their efforts to sustain it before the United States Supreme Court. After having two arguments before the Supreme Court it was, on June 22, 1914, affirmed. Before this decision could be put into effect the Panama Canal was opened for business, and the carriers, under that portion of the proviso in which it says that the commission may from time to time measure the extent, applied for further relief. It was the claim of the carriers that the competition of water carriers operating through the Panama Canal was so intensified that on a large number of commodities they must be permitted to reduce their rates upon these certain commodities still lower to the Pacific coast terminals than was permitted by the Interstate Commerce Commission's percentage order. They selected a large number of articles which they claimed were most susceptible to the carriage by water and designated them as schedule C. A hearing on this application was held at Chicago on November 6, 1914. We protested vigorously against this adjustment for the reason that while the scheme in many instances lowered our rates it increased in a great many important items the discrimination existing between us and the Pacific coast terminals.

In January, 1915, the Interstate Commerce Commission permitted the carriers to further reduce their rates to the Pacific coast terminals and to carry rates to the interior, including Spokans, as follows: From Missouri River points they should be the same as to the Pacific coast terminals; from the Chicago territory they could exceed the Pacific coast terminal rate by 15 cents per hundredweight; from Buffalo-Pittsburgh territory they could exceed the Pacific coast terminal rate by 25 cents per hundredweight; and from New York territory they could exceed the Pacific coast terminal rate by 35 cents per hundredweight. This adjustment, while not covering all the items in the tariff, did cover approximately 75 per cent of the west-bound transcontinental tonnage to Spokane, and while, as above stated, it did in many instances lower our rates, it increased our discrimination over the percentage order in many of the important items. These rates became effective July 15, 1915.

On or about the 1st of February, 1916, the water carriers operating between the Atlantic and the Pacific coast gave notice to the shippers throughout the Pacific Northwest that, owing to the demand for shipping due to the European war, they were taking off their ships from the coastwise routes. Spokane, believing, as did the railroads, that the proviso of the amendment providing that the commission from time to time might measure the extent of the relief granted meant that when conditions changed and the force of competition had changed the rates should be changed with the conditions, sent me to Washington for the purpose of trying to convince the Interstate Commerce Commission that it was their duty to take note of the changed conditions and relieve the interior from the discrimination. You may imagine my consternation when I was told by members of

the commission that they would not open up the question. I was finally instructed to file a formal complaint, which I did in March, 1916. I was told by members of the commission that their order 124, which was the percentage order, had gone to the Supreme Court, was affirmed by that body, and they were not going to open it up again. In other words, relief having once been granted to the carriers, under no circumstances would they change the rates.

I was in Washington several weeks before I could get a hearing on my formal complaint. When the hearing was finally set I was confined to the special and extraordinary relief granted under the so-called schedule C, although in my petition I asked that all schedules carrying higher rates to the interior than to the Pacific coast terminals be examined into. The hearing was had in Washington in April, 1916, and on June 6, 1916, the commission found:

The war and unparalleled rise in prices for ocean transportation has so changed the situation as to transform the relation of rates which was justified when established to one that is now unjustly discriminatory against intermediate points.

And—

To continue rates to the coast points that are lower than are necessitated by the actual water competition and higher rates to the intermediate points and to other points over similar distances under like circumstances is to perpetuate a discrimination that is unjust.

And—

That portion of the fourth section which provided the commission may from time to time prescribe the extent to which the carrier may be relieved from the requirements of this section seems to contemplate a certain flexibility in rates at the competitive points, varying with the degree of competition there found in connection with which rates relief may be afforded according to the degree and extent of the competition.

I feel very confident that the commission correctly stated the law, as it now stands, as it was intended to be applied, except that I contended then and still contend that when conditions changed it was the duty of the Interstate Commerce Commission, of its own motion, to inquire into the changed conditions and make its orders accordingly. In this decision the Interstate Commerce Commission ordered the discrimination, or rather ordered the extraordinary relief granted by schedule C to be canceled.

The carriers saw fit, as they had a right to do, to remove the discrimination by raising the rates to the Pacific coast terminals to the level of the interior rates. Our Pacific coast friends had enjoyed preferential rates so long that you can imagine the wail of distress that went up from that section of the country. In August, 1916, in Washington a hearing on the proposed rates was held and after listening to hundreds of protests against the proposed increases the rates were suspended. On December 31 so-called compromise rates were allowed to go into effect, which removed the discrimination in part only. The carriers were allowed to increase the Pacific coast rates 10 cents per hundred. This helped some, but did not carry out the order of the Interstate Commerce Commission, and there has always been a mystery connected with this compromise. We have never been able to make out who were the parties to the compromise. The coast shippers have always claimed they did not put

it over, and I understand the commission has never acknowledged any part of it. At any rate, the order was never put into effect, and the compromise rates became effective without ever consulting any of the interior cities, who were the complainants.

In September, 1916, the Spokane Merchants' Association filed another complaint in which it asked that all schedules naming higher rates to the interior than to the Pacific coast terminals be inquired into and discrimination removed. You will remember we had asked that relief in our first complaint, filed in March, but inasmuch as we had been successful in relation to schedule C we could see no further reason for the continuation of any discrimination. The commission called hearings on this last complaint in November, starting at Chicago, from thence to Salt Lake City, San Francisco, Portland, and Spokane.

In our last complaint we put in issue the reasonableness of rates to Spokane and to the Pacific coast terminals. The hearings were held before Examiner Thurtell, and some time in the spring or early summer of 1917 the examiner made his report, in which he recommended that the rates from Missouri River to the Pacific coast terminals be found as reasonable in and of themselves; that the rates at the interior points be fixed upon a certain percentage of the Pacific coast terminal rates. Under this adjustment we will suppose the rate from Missouri River to the Pacific coast terminal was \$1 on a given commodity. The rate from Missouri River to Spokane would have been approximately 90 cents. He then suggested that the rates from the East be built up by adding 15 cents per hundred from Chicago common points, 25 cents per hundred from Buffalo-Pittsburgh common points, and 25 cents per hundred from New York and other Atlantic seaboard points, which would have made the Pacific coast terminal rate as follows: \$1 per hundred from Missouri River, \$1.15 per hundred from Chicago, \$1.25 per hundred from Pittsburgh, \$1.35 per hundred from New York.

The rates to Spokane would have been as follows: Ninety cents per hundred from Missouri River, \$1.05 per hundred from Chicago, \$1.15 per hundred from Pittsburgh, \$1.25 per hundred from New York.

I believed and still believe that this report should have been adopted, but the report was not adopted, and on June 20, 1917, the commission handed down its decision, in which it says:

The present situation, however, is beyond dispute. There is no existing competitive necessity by reason of water service between the two coasts which warrants the rail carriers in maintaining under present circumstances lower rates to the Pacific coast terminals than are normal and reasonable or lower than to intermediate points.

The commission in this order required that all discrimination between the interior and the Pacific coast terminals should be eliminated and that rates should be adjusted so as to meet all the requirements of sections 1, 3, and 4 of the act to regulate commerce. Before this order could go into effect Congress had amended the fifteenth section of the act to regulate commerce, in which it required the Interstate Commerce Commission to have hearings before granting any increase of rates. Under this requirement the commission set dates for hearings as follows: New York, November 4; Chicago,

November 11; and Portland, Oreg., November 21, 1917. The carriers in compliance with this order of June 30, 1917, presented a tariff which did comply with the fourth section of the act, although they did it by raising the rates to the Pacific coast terminals instead of lowering them to the interior, as we had hoped they might, but did not adjust the rates in conformity with sections 1 and 3 of the act as suggested by the Interstate Commerce Commission and which proposed rates have now been authorized by the Interstate Commerce Commission and became effective March 15, 1918.

I noticed in Mr. Seth Mann's testimony, given before the joint committee at San Francisco in 1917, he claims that Spokane and the other intermountain cities had received from the Interstate Commerce Commission many favorable decisions within the last 25 years. You can see from the foregoing statement that while favorable decisions were rendered they did not become effective and not until March 15, 1918, did any order that the Interstate Commerce Commission made in the Spokane cases become effective in its entirety. I desire to call the attention of the committee to the fact that when the carriers made application for further relief under the amended provision of the fourth section on account of increased water competition caused by the opening of the Panama Canal, they obtained complete relief within a period of not exceeding nine months, while the city of Spokane, though filing its complaint in March, 1916, did not get complete relief until March, 1918. Some of our coast friends have been very solicitous of what they term criticism of the Interstate Commerce Commission by the intermountain section. I do not want to be put in an attitude of criticizing the Interstate Commerce Commission. Each and every member of that honorable body knows that I have the greatest respect for them and I have never criticized them in any manner whatever. The foregoing statement, however, in regard to their decisions are borne out by the records. It is not alluded to in a critical mood, but for the express purpose of showing that the law as it has stood since the amendment of 1910 did not satisfy, does not protect the intermountain section, and does not give the relief it was intended to give. That being the case, it is our contention that the United States Government should adopt a different policy. This question which is being presented is purely a question of public policy and it is just as appropriate to say that every person who advocates the passage of the absolute fourth section is criticizing the Interstate Commerce Commission as to say that the intermountain section, by stating the facts as they are borne out by the records, is criticizing it. Right here, may I suggest that during all this litigation for just treatment to that great intermountain section we find our coast friends lined up with the railroads fighting against the granting of relief to the interior and insisting upon preferential rail rates and virtually claiming that water transportation gives them a claim to have those preferential rail rates perpetuated even after water competition has ceased.

It would seem to us that a city so favorably located as the cities upon the Pacific coast, and having a means of transportation which the interior can not have, and which they claim gives them a permanent advantage over the interior, would be satisfied with that extra mode of transportation and that superlative advantage, and not join with the railroads in trying to defeat the gaining of just rates for

their less fortunate brethren who are located in the intermountain section. It is also claimed by the coast cities, which, it seems to us, makes their contentions ridiculous, that they are here protecting the interests of the interior; that if this bill is passed it must of necessity mean an increase of rail rates to the interior points; and it is, indeed, ludicrous to note the crocodile tears shed by our coast advocates because of the harm we are doing ourselves by advocating this measure.

Water competition from the Atlantic to the Pacific and from the Pacific to the Atlantic ceased entirely in September, 1915, by the temporary closing of the Panama Canal by slides. On or about the 1st of February, 1916, the American Hawaiian Steamship Co. and the Luckenbach Steamship Co. notified shippers that, on account of the European war, they were going out of the coastwise business. During 1916 and 1917 the Interstate Commerce Commission found in two different decisions that there was no controlling water competition between the two coasts, and yet for a period of two years Spokane and the other intermountain communities suffered a discrimination which was unjust and condemned by the law and by former decisions of the Interstate Commerce Commission, which hold in effect that reparation will not be given for mere discrimination; they have suffered a wrong for which there is no remedy.

I think it can be said, as a general principle, with certain limitations, of course, that the shipper is not concerned so much in the amount of the freight, providing his commodity moves freely, as he is in having a rate which is not discriminatory, and this is particularly true of communities. The census of 1910 shows that the inland empire, of which Spokane is the center, produced in natural wealth approximately \$147,000,000, and during that time the Puget Sound country produced approximately \$97,000,000, and yet the density of population is much greater in the Puget Sound country than in the inland empire. The inland empire has a population of between 6 and 7 per square mile, while the Puget Sound country has something like 28 per square mile. A large part of this unnatural growth is due to the favoritism given the coast in freight rates. I have before me a shipping bill where a carload of tallow was shipped by E. H. Stanton & Co. to Chicago, Ill. Instead of this car being shipped direct from Spokane to Chicago, Ill., as you would naturally expect it to be, it was billed Spokane to Seattle and from Seattle to Chicago right back through the city of Spokane, from whence it started. You naturally are curious to know why this car was hauled over 700 miles more than it was necessary to haul it to get it to Chicago. The reason was this: The lard weighed 62,100 pounds, and the rate on that car of lard if shipped direct from Spokane to Chicago was \$1.25 per hundred, or the sum of \$776.25 for the car if shipped direct from Spokane to Chicago. It moved to Seattle at a rate of 50 cents per hundred and from Seattle to Chicago, directly through Spokane, at a rate of 60 cents per hundred, or a total of \$1.10 per hundred and a total for the car of \$683.10. In other words, the car was hauled 700 miles for nothing and the Northern Pacific Railroad Co. paid \$93.15 for the privilege of hauling it that 700 extra miles.

(Stanton bills received and hereto attached.)

EXHIBIT A.

Spokane, Wash., Nov. 27, 1911. Shipper's No.: 23609. By Northern Pacific Railroad Co.

Consigned to: E. H. Stanton Co. Destination: % H. I. Norton Co., Seattle, Wn. Car initial: C. & N. W. Car No.: 10396.

No. packages: 139. Description of articles and special marks: Bbls. tallow. Weight subject to correction: 62,100. Prepaid.

E. H. Stanton Co., Inc., shippers. Per Beckwith.

Indorsed on face: Orig. sent to Norton Co., Seattle, 11-29-11 to deliver Ry. Co.

Seattle, Wash., 1911. Shipper's No.: 23610. By Northern Pacific Railroad Co. Consigned to: John Miller & Co., Chicago, Ill. Car Initial: C. & N. W. Car No.: 10396.

No. packages: 139. Description of articles and special marks: Bbls. tallow. Weight subject to correction: 62,100.

Via N. P. C. & N. W.

E. H. Stanton Co., Inc., shippers

Take the wool situation for instance. It is a known fact that there is little wool produced on the Pacific coast. While the interior, like Pendleton, Oreg., Cheyenne, Wyo., Salt Lake City, Utah, and Nevada, eastern Washington, and western Montana, are the large wool producers of the West, and yet the rate on wool from Spokane to Boston was, prior to the recent adjustment, something like \$1.75 per hundred, while the rate from Seattle to Boston was \$1 per hundred. This rate was made upon the theory that wool moved by water from Seattle to Boston, but in order to do that the wool first had to be moved from the interior to Seattle, and it does not seem to us that if water competition on wool was the real reason for making a low rate on wool to Boston that it would have been made from the interior where wool is produced and where the ships can not come to get it, rather than to move the wool to the coast where the ships could get it. We think it is a part of the general scheme of the railroads of the country, backed by the Pacific coast cities, to favor the Pacific coast at the expense of the interior. It is impossible for a community subject to such a discrimination as the interior has been subjected to to grow in its just and proper proportion. The discrimination enters into every activity of the community. For instance, a bridge was built last year at Priest River, Idaho. In building that bridge there was 85½ tons of steel used. The steel was shipped from Jacksonville, Ill., and the freight was \$1,547.41, while, if that same steel had been shipped right through Priest River on to Tacoma or Seattle, the freight would have been \$966.38, or approximately \$600 less. In 1912 the Old National Bank Building, a 15-story building, was built in Spokane, and the freight upon the steel used in that building amounted to just exactly \$22,360. More than the same steel would have cost had the building been erected on the Pacific coast.

The Union Iron Works, of the city of Spokane is a large manufacturing establishment engaged in manufacturing mining machinery and milling machinery. A similar plant in Portland, Oreg., could, prior to March, 1918, ship its raw material to Portland, Oreg., and ship the manufactured product to Wallace, Idaho, 140 miles east of Spokane for 29 cents a hundred less than the Union Iron Works

could get its raw material from Pittsburg and ship the manufactured product to Wallace, Idaho. A haul of approximately 940 miles farther for 29 cents per hundredweight less.

The whole scheme of rates has been made in the past with the view of favoring the Pacific coast against the interior. We discovered last fall, when we succeeded in getting a large packing plant to locate in Spokane, that the live-stock rates from Montana, Idaho, and Wyoming points were practically the same to both Spokane and the Pacific coast, though Spokane is nearer the source of supply by an average of 400 miles. These live-stock rates were simply other examples of the favoritism for which our coast friends fight so hard to maintain.

I have here an exhibit which gives a large number of the rates from eastern defined territory to Spokane and the coast, and also an exhibit which was introduced by Mr. Blakely, general freight agent of the Northern Pacific Railroad Co. in Spokane in December, 1916, in which he testified that if the coast rate was applied to Spokane it would cut the Northern Pacific rates back to Fridley, Minn., a distance of approximately 1,286 miles, and I wish that this exhibit could be given careful consideration, as it contains a tabulation of the rates from eastern defined territory to the coast and the corresponding rate to the most distant point. It illustrates that on account of so-called water competition the railroads have built up a tariff system whereby they charge more to points inland than they do to the Pacific coast points over 1,200 miles longer haul. As an illustration of this system I have prepared a map which I desire to introduce at this point, also an exhibit of the rates to which I have just referred. (Map marked "Exhibit B."¹) Also Exhibit C, being Blakely exhibit.

¹ Exhibit B not printed.

CARLOAD COMMODITY RATES.
EXHIBIT C.

Illustration by typical commodities of the effect in northwestern inland territory of maximum rates based on water-compelled rates to the Pacific coast ports.
(St. Paul, Minn., Dec. 1, 1916.)

SCHEDULE B COMMODITIES, CARLOADS.

Items 4M.	Commodities.	Rates to -					A.	B.	C.	D.	E.	F.	Terminal rate applied as maxi- mum at intermediate points would cut -	Based on car-load ratings shown would cut
370	Carpeting..... Minimum, 30,000 pounds. W-1. O-1.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	\$1.25 1.56 1.56 1.56 1.56 1.56 2.50	\$1.25 1.44 1.44 1.44 1.44 1.44 2.40	\$1.25 1.44 1.44 1.44 1.44 1.44 2.24	\$1.25 1.34 1.34 1.34 1.34 1.34 2.16	\$1.25 1.25 1.25 1.25 1.25 1.25 1.92	A at Fridley, Minn..... B at Gregory, Minn..... C at Darling, Minn..... D at Mapleton, N. Dak..... E at Haggart, N. Dak..... F at Lehigh, N. Dak.....	A at Casselton, N. Dak. B at Driscoll, N. Dak. C at Mandan, N. Dak. Third D at Boyle, N. Dak. E at Richardson, N. Dak. F at Custer, Mont.					
376	Cash registers..... Minimum, 30,000 pounds. W-14. O-R-26.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	2.50 3.13 3.13 3.13 3.13 3.13 5.25	2.50 2.88 2.88 2.88 2.88 2.88 4.58	2.50 2.68 2.68 2.68 2.68 2.68 4.35	2.50 2.68 2.68 2.68 2.68 2.68 4.20	2.50 2.50 2.50 2.50 2.50 2.50 3.75	A at Gladstone, N. Dak..... B at De Moines, N. Dak..... C at Sentinel Butte, N. Dak..... D at Judson, N. Dak..... E at Lyons, N. Dak..... F at Ulmer, Mont.....	A at Ulmer, Mont. B at Big Timber, Mont. C at Livingston, Mont. Second D at Spokane, Wash. E at Prosser, Wash. F at Thorp, Wash.					
422	Clothing, cotton..... Minimum, 20,000 pounds. W-1. O-1.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	1.50 1.88 1.88 1.88 1.88 1.88 2.03	1.50 1.73 1.73 1.73 1.73 1.73 1.95	1.50 1.61 1.61 1.61 1.61 1.61 1.82	1.50 1.61 1.61 1.61 1.61 1.58 1.76	1.50 1.50 1.50 1.48 1.40 1.26 1.56	A at Randall, Minn..... B at Stockwood, Minn..... C at Fargo, N. Dak..... D at Crystal Springs, N. Dak..... E at Winkler, N. Dak..... F at Terry, Mont.....	A at Sweet Briar, N. Dak. B at Flond, N. Dak. C at Scotia, N. Dak. Third D at Miles City, Mont. E at Terry, Mont. F at Butte, Mont.					
584	Furniture, bedsteads, iron, etc. Minimum, 30,000 pounds. O-R-26. W-5.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	1.10 1.38 1.38 1.38 1.38 1.38 2.00	1.10 1.27 1.27 1.27 1.27 1.27 1.81	1.10 1.18 1.18 1.18 1.18 1.12 1.74	1.10 1.18 1.18 1.18 1.18 1.12 1.71	1.10 1.10 1.10 1.05 1.02 1.35	A at Curlew, N. Dak..... B at Wibaux, Mont..... C at Glendive, Mont..... D at Billings, Mont..... E at Billings, Mont..... F (no cut).....	A at Curlew, N. Dak. B at Wibaux, Mont. C at Glendive, Mont. D at Billings, Mont. E at Billings, Mont. F (no cut)					
802	Liquors, N. O. S..... Minimum, 30,000 pounds. O-3.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present).....	1.25 1.56 1.53 1.56 1.56	1.25 1.44 1.44 1.44 1.44	1.25 1.34 1.34 1.34 1.34	1.25 1.34 1.34 1.34 1.34	1.25 1.25 1.25 1.23 1.17	A at Royaldon, Minn..... B at Stockwood, Minn..... C at Haggart, N. Dak..... D at Sims, N. Dak..... E at Eldridge, N. Dak.....	A at Casselton, N. Dak. B at Driscoll, N. Dak. C at Mandan, N. Dak. Third D at Sentinel Butte, N. Dak. E at Fryburg, N. Dak.					

		Billings (present)	1.50	1.44	1.41	1.31	1.31	1.05	F at Custer, Mont.
900	Pianos and organs	Spokane (1912).....	1.69	1.60	1.63	1.52	1.46	1.30	
	Minimum, 12,000 pounds.								
	O 2	Terminal (present).....	2.00	2.00	2.00	2.00	2.00	2.00	A at Kurtz, N. Dak.
	W 2	Maximum (present).....	2.50	2.50	2.50	2.14	2.14	2.00	B at Wibaux, Mont.
		Spokane (present).....	2.50	2.50	2.50	2.14	2.14	2.00	C at Glendive, Mont.
		Missoula (present).....	2.50	2.50	2.50	2.14	2.14	2.00	D at Custer, Mont.
		Butte (present).....	2.50	2.50	2.50	2.14	2.14	2.00	E at Forsyth, Mont.
		Billings (present).....	2.50	2.50	2.50	2.14	2.14	2.00	F (no cut)
		Spokane (1912).....	2.70	2.70	2.60	2.43	2.34	2.08	
1114	Pumps, hand	Terminal (present).....	1.10	1.10	1.10	1.10	1.10	1.10	A at Wibaux, Mont.
	Minimum, 30,000 pounds.	Maximum (present).....	1.38	1.27	1.27	1.18	1.18	1.10	B at Miles City, Mont.
	O 5.	Spokane (present).....	1.38	1.27	1.27	1.18	1.18	1.10	C at Miles City, Mont.
	W A.	Missoula (present).....	1.38	1.27	1.27	1.18	1.18	1.10	D at Billings, Mont.
		Butte (present).....	1.38	1.27	1.27	1.18	1.18	1.05	E at Billings, Mont.
		Billings (present).....	1.38	1.27	1.27	1.18	1.16	1.02	F (no cut)
		Spokane (1912).....	1.73	1.68	1.63	1.50	1.46	1.33	
1240	Stamped ware	Terminal (present).....	1.20	1.20	1.20	1.20	1.20	1.20	A at Antelope, N. Dak.
	Minimum, 22,000 pounds.	Maximum (present).....	1.50	1.38	1.38	1.28	1.28	1.20	B at Wibaux, Mont.
	O 4	Spokane (present).....	1.50	1.38	1.38	1.28	1.28	1.20	C at Glendive, Mont.
	W 4.	Missoula (present).....	1.50	1.38	1.38	1.28	1.28	1.19	D at Forsyth, Mont.
		Butte (present).....	1.50	1.38	1.38	1.28	1.28	1.13	E (at Forsyth, Mont.)
		Billings (present).....	1.50	1.38	1.38	1.27	1.27	1.02	F (no cut)
		Spokane (1912).....	1.63	1.63	1.56	1.46	1.41	.25	
1288	Stoves, coal and wood burning	Terminal (present).....	1.30	1.30	1.30	1.30	1.30	1.30	A at Custer, Mont.
	Minimum, 24,000 pounds.	Maximum (present).....	1.63	1.50	1.50	1.39	1.39	1.30	B at Big Timber, Mont.
	O 3.	Spokane (present).....	1.63	1.50	1.50	1.39	1.39	1.30	C at Big Timber, Mont.
	W 3.	Missoula (present).....	1.63	1.50	1.50	1.39	1.39	1.30	D at Lohrop, Mont.
		Butte (present).....	1.63	1.50	1.50	1.39	1.39	1.30	E at Lohrop, Mont.
		Billings (present).....	1.63	1.50	1.50	1.39	1.39	1.30	F (no cut)
		Spokane (1912).....	1.67	1.57	1.52	1.47	1.43	1.33	
1360	Toys	Terminal (present).....	1.50	1.50	1.50	1.50	1.50	1.50	A at Bloom, N. Dak.
	Minimum, 20,000 pounds.	Maximum (present).....	1.88	1.73	1.73	1.61	1.61	1.50	B at Lyons, N. Dak.
	O 3.	Spokane (present).....	1.88	1.73	1.73	1.61	1.61	1.50	C at Jndson, N. Dak.
	W 2.	Missoula (present).....	1.88	1.73	1.73	1.61	1.61	1.48	D at Hebron, N. Dak.
		Butte (present).....	1.88	1.73	1.73	1.61	1.61	1.40	E at Kurtz, N. Dak.
		Billings (present).....	1.88	1.73	1.73	1.58	1.58	1.26	F (no cut)
		Spokane (1912).....	2.03	2.03	1.95	1.82	1.76	1.56	
1448	Woodenware	Terminal (present).....	1.50	1.50	1.50	1.50	1.50	1.50	A at Miles City, Mont.
	Minimum, 16,000 pounds.	Maximum (present).....	1.88	1.73	1.73	1.61	1.61	1.50	B at Custer, Mont.
	O-R 26.	Spokane (present).....	1.88	1.73	1.73	1.61	1.61	1.50	C at Custer, Mont.
	W 4.	Missoula (present).....	1.88	1.73	1.73	1.57	1.57	1.34	D at Missoula, Mont.
		Butte (present).....	1.88	1.73	1.73	1.49	1.49	1.26	E at Missoula, Mont.
		Billings (present).....	1.88	1.73	1.714	1.36	1.36	1.11	F (no cut)
		Spokane (1912).....	1.69	1.502	1.57	1.52	1.46	1.30	

: Combination.

CARLOAD COMMODITY RATES—Continued.

Illustration by typical commodities of the effect in northwestern inland territory of maximum rates based on water-compelled rates to the Pacific coast ports—Continued.

SCHEDULE C COMMODITIES, CARLOADS.

Items 4M.	Commodities.	Rates to—	A	B	C	D	E	F	Terminal rate applied as maximum at intermediate points would cut—
1686	Canned goods. Minimum 60,000 pounds. O-5. W-5.	Terminal (present). Maximum (present). Spokane (present). Missoula (present). Butte (present). Billings (present). Spokane (1912).	\$0.75 1.07 1.10 1.10 1.10 1.10 1.48	\$0.75 1.00 1.00 1.00 1.00 1.00 1.48	\$0.75 1.00 1.00 1.00 1.00 1.00 1.42	\$0.75 1.00 1.00 1.00 1.00 1.00 1.33	\$0.75 1.00 1.00 1.00 1.00 1.00 1.28	\$0.75 1.00 1.00 1.00 1.00 1.00 1.14	A at Magnolia, N. Dak. B at Tappen, N. Dak. C at Bismarck, N. Dak. D at Sully Springs, N. Dak. E at Belfield, N. Dak. F (no cut).
1700	Dry goods (cotton piece goods). Minimum 40,000 pounds. O-R-25.	Terminal (present). Maximum (present). Spokane (present). Missoula (present). Butte (present). Billings (present). Spokane (1912).	.90 1.25 1.25 1.25 1.25 1.25 1.48	.90 1.15 1.15 1.15 1.15 1.15 1.48	.90 1.15 1.15 1.15 1.15 1.15 1.43	.90 1.05 1.05 1.05 1.05 1.05 1.33	.90 1.05 1.05 1.05 1.05 1.05 1.28	.90 1.00 1.00 1.00 1.00 1.00 1.14	A at East of St. Paul. B at East of St. Paul. C at East of St. Paul. D at Darling, Minn. E at Royaton, Minn. F at Crystal Springs, N. Dak.
1732	Lawn mowers. Minimum 40,000 pounds. O-5. W-4.	Terminal (present). Maximum (present). Spokane (present). Missoula (present). Butte (present). Billings (present). Spokane (1912).	.95 1.30 1.30 1.30 1.30 1.30 1.56	.95 1.20 1.20 1.20 1.20 1.20 1.56	.95 1.20 1.20 1.20 1.20 1.20 1.50	.95 1.10 1.10 1.10 1.10 1.10 1.40	.95 1.10 1.10 1.10 1.10 1.10 1.35	.95 1.00 1.00 1.00 1.00 1.00 1.20	A at Dawson, N. Dak. B at Sweet Briar, N. Dak. C at Feland, N. Dak. D at South Heart, N. Dak. E at Rider, N. Dak. F (no cut).
1776	Structural iron. Minimum 60,000 pounds. O-5.	Terminal (present). Maximum (present). Spokane (present). Missoula (present). Butte (present). Billings (present). Spokane (1912).	.75 1.10 1.975 1.08 1.08 1.075 1.08	.65 1.00 1.875 1.00 1.00 1.075 1.08	.65 1.00 1.875 1.00 1.00 1.075 1.04	.55 1.00 1.775 1.30 1.32 1.818 1.07	.55 1.00 1.775 1.30 1.32 1.76 1.07	.55 1.00 1.775 1.30 1.32 1.76 1.07	A (Bethlehem) at Oriska, N. Dak. B (Pittsburgh) at Eckelson, N. Dak. C (Chicago) at Mandan, N. Dak. F (Duluth) at Sully Springs, N. Dak.
1784	Bar iron. Minimum 80,000 pounds.	Terminal (present). Maximum (present). Spokane (present). Missoula (present). Butte (present). Billings (present). Spokane (1912).	.75 1.05 1.08 1.08 1.075 1.08 1.08	.65 1.00 1.95 1.00 1.00 1.075 1.08	.65 1.00 1.95 1.00 1.00 1.075 1.01	.55 1.00 1.75 1.30 1.32 1.818 1.07	.55 1.00 1.75 1.30 1.32 1.76 1.07	.55 1.00 1.75 1.30 1.32 1.76 1.07	A (Bethlehem) at Oriska, N. Dak. B (Pittsburgh) at Eckelson, N. Dak. C (Chicago) at Mandan, N. Dak. F (Duluth) at Sully Springs, N. Dak.

1828	Nails and wire, including cement-coated nails. Minimum 80,000 pounds.	Terminal (present)..... Maximum (present).....	.75 1.10	.45 1.00	.55 1.00	.55 .90	.55 .75	A at Oriska, N. Dak. B (Pittsburgh-Cleveland) at Koke'son, N. Dak. D (Chicago) at Mandan, N. Dak. F at Sully Springs, N. Dak.
		Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	1.05 1.10 1.10 1.10 1.08	1.00 1.00 1.00 1.00 1.08	.95 1.00 1.00 1.00 1.04	.85 1.00 1.00 1.00 1.00	.90 1.00 1.00 1.00 1.00	
	Nails and wire, without cement-coated nails. Minimum 40,000 pounds. Nails and spikes. Minimum 50,000 pounds.	Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (present)..... Terminal (present)..... Maximum (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	.95 1.00 1.00 1.00 1.00 1.25 1.22 1.22 1.22 1.35	.95 1.00 1.00 1.00 1.00 1.15 1.15 1.15 1.15 1.35	.91 1.00 1.00 1.00 1.00 1.15 1.15 1.15 1.15 1.30	.90 1.00 1.00 1.00 1.00 1.05 1.05 1.05 1.05 1.21	.90 1.00 1.00 1.00 1.00 1.05 1.05 1.05 1.05 1.17	A at Sully, N. Dak. B at South Heart, N. Dak. C at De Mores, N. Dak. D at Terry, Mont. E at Terry, Mont. F (no cut).
1894	Oil, petroleum..... Minimum 26,000 pounds. O-5. W-5.	Terminal (present)..... Maximum (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	.75 1.10 1.10 1.10 1.10 1.35	.75 1.00 1.00 1.00 1.00 1.35	.75 1.00 1.00 1.00 1.00 1.30	.75 1.00 1.00 1.00 1.00 1.21	.75 1.00 1.00 1.00 1.00 1.17	A (Philadelphia) at Perham, Minn. B at Haggart, N. Dak. D (Chicago) at Bismarck, N. Dak. F at Rider, N. Dak.
1896	Paint..... Minimum 40,000 pounds. O-5. W-5.	Terminal (present)..... Maximum (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	.75 1.10 1.10 1.10 1.10 1.29	.75 1.00 1.00 1.00 1.00 1.29	.75 1.00 1.00 1.00 1.00 1.24	.75 1.00 1.00 1.00 1.00 1.16	.75 1.00 1.00 1.00 1.00 1.12	A at Magnolia, N. Dak. B at Tappen, N. Dak. C (Detroit) at Lyons, N. Dak. D (Cincinnati) at Bismarck, N. Dak. E (Chicago) at Sully Springs, N. Dak. F (no cut).

1 Combination.

2 On steamer C. L., beans, peas, corn, tomatoes, fish, meals, and milk, 40,000 pounds, rate 72 cents per hundred weight.

3 Based on back haul, using 22.5 cents.

4 Minimum 40,000 pounds.

5 Combination.

6 Based on back haul, using 30 cents.

7 Minimum 40,000 pounds.

8 Combination.

9 Based on back haul, using 30 cents.

10 Compromise rate.

11 Combination, using 30 cents, back haul.

CARLOAD COMMODITY RATES—Continued.

Illustration by typical commodities of the effect in northwestern inland territory of maximum rates based on water-compelled rates to the Pacific coast ports—Continued.

SCHEDULE C COMMODITIES, CARLOADS—Continued.

Items 4 M.	Commodities.	Rates to —	A	B	C	D	E	F	Terminal rate applied as maximum at intermediate points would cut—
1918	Paper, newsprint. Minimum 40,000 pounds. O-5. W-5.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	\$0.75 1.10 1.01 1.00 1.00 1.00 1.01	\$0.75 1.00 1.00 1.00 1.00 1.00 1.01	\$0.75 1.00 1.00 1.00 1.00 1.00 1.00	\$0.75 1.00 1.00 1.00 1.00 1.00 1.00	\$0.75 1.00 1.00 1.00 1.00 1.00 1.00	\$0.75 1.00 1.00 1.00 1.00 1.00 1.00	A at Magnolia, N. Dak. B at Tappan, N. Dak. C at Bismarck, N. Dak. D at Sully Springs, N. Dak. E at Sully Springs, N. Dak. F (no cut).
1924	Building paper. Minimum 40,000 pounds. O-5. W-5.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	.75 1.10 1.01 1.01 1.01 1.01 1.01	.75 1.00 1.00 1.00 1.00 1.00 1.01	.75 1.00 1.00 1.00 1.00 1.00 1.00	.75 1.00 1.00 1.00 1.00 1.00 1.00	.75 1.00 1.00 1.00 1.00 1.00 1.00	.75 1.00 1.00 1.00 1.00 1.00 1.00	A at Sweet Briar, N. Dak. B at Leigh, N. Dak. C at Sully Springs, N. Dak. D at Butte, Mont. F (no cut).
1954	Soap. Minimum 40,000 pounds. O-5. W-5.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	.80 1.15 1.06 1.06 1.08 1.08 1.08	.80 1.05 1.05 1.06 1.05 1.05 1.06	.80 1.05 1.04 1.04 1.04 1.04 1.04	.80 1.05 1.04 1.04 1.04 1.04 1.04	.80 1.05 1.04 1.04 1.04 1.04 1.04	.80 1.05 1.04 1.04 1.04 1.04 1.04	A (Philadelphia) at Eldridge, N. Dak. C (Cincinnati) at Sodalie, N. Dak. F (Kansas City) at Sentinel Butte, N. Dak. F (St. Paul) (no cut).
1976	Radiators. Minimum 50,000 pounds. O-5. W-5.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	.75 1.10 1.10 1.10 1.10 1.10 1.15	.75 1.00 1.00 1.00 1.00 1.00 1.35	.75 1.00 1.00 1.00 1.00 1.00 1.30	.75 1.00 1.00 1.00 1.00 1.00 1.205	.75 1.00 1.00 1.00 1.00 1.00 1.17	.75 1.00 1.00 1.00 1.00 1.00 1.04	A at Magnolia, N. Dak. B (Buffalo) at Tappan, N. Dak. D (Chicago) at Wibaux, Mont. F (no cut).
1904	Twine and cordage. Minimum 40,000 pounds. O-4. W-4.	Terminal (present)..... Maximum (present)..... Spokane (present)..... Missoula (present)..... Butte (present)..... Billings (present)..... Spokane (1912).....	.75 1.10 1.09 1.10 1.10 1.10 1.48	.75 1.00 1.00 1.00 1.00 1.00 1.48	.75 1.00 1.00 1.00 1.00 1.00 1.43	.75 1.00 1.00 1.00 1.00 1.00 1.33	.75 1.00 1.00 1.00 1.00 1.00 1.28	.75 1.00 1.00 1.00 1.00 1.00 1.14	A (Boston) at Bluffton, Minn. B at Haggart, N. Dak. C at Dufur, N. Dak. D at Bismarck, N. Dak. E at Apple Creek, N. Dak. F at De Mores, N. Dak.

1 Combination, using 30 cents, back haul.

2 St. Paul combination.

3 Combination, using 34 cents, back haul.

You will note the narrow fringe along the Pacific coast from Canada to Mexico, which is called the favored area, being but a few miles in width and containing a population of 2,000,000 people. While the territory between that eastern shaded line and the western shaded line is the territory discriminated against and extends from Canada to Mexico and is approximately 1,300 miles from east to west and contains a population of 13,000,000 people. I desire to call your attention further to that map and ask you to follow the black line in the north, which starts at Albany, N. Y., thence to Bluffton, Minn., west to Billings, Billings to Butte, Butte to Spokane, Spokane to Seattle. Now, the rate on a carload of binder twine from Albany, N. Y., to Bluffton, Minn., is 76 cents per hundred pounds, while that same car will be carried through Bluffton, through Billings, Butte, and Spokane to Seattle for 75 cents per hundred pounds, while the rate to Spokane is \$1 per hundred pounds and to Butte \$1.10 per hundred pounds. Now, move your eyes down on that map and follow the black line from Pittsburgh to Denver, Denver to Salt Lake, Salt Lake to Reno, Reno to San Francisco. The rate of structural steel from Pittsburgh to San Francisco right through Denver, Salt Lake, and Reno is 65 cents per hundred pounds, while the rate on that same carload of structural steel if stopped at Reno, some 200 miles shorter distance, is \$1 per hundred. Now, that is not the worst of it. There are large steel plants at Pueblo, Colo., and Pueblo takes the Denver rate. Now, the rate from Pueblo on structural steel to San Francisco is 40 cents a hundred, while if that same carload of steel was stopped at Reno from Pueblo, the rate is 75 cents per hundred; in other words, they charge Reno 10 cents a hundred more for steel shipped from Pueblo than they charge San Francisco for steel shipped from Pittsburgh, while the distance from Pueblo to San Francisco is 2,768 miles and the distance from Pueblo to Reno is but 1,338. Now, if there is any man on the face of the green earth who can justify that sort of a rate on the ground of water competition or any other competition, I would like to have a photograph of him.

The Interstate Commerce Commission has attempted to do it, but in their attempt they have the anomaly of allowing a rate from Pittsburgh to San Francisco of 65 cents per hundred on the ground of water competition from New York to San Francisco, while at the same time the rate from New York to San Francisco on structural steel was 75 cents a hundred, although the boats could take the structural steel from the piers of New York, but in order for it to move from Pittsburgh by water it had to move from Pittsburgh to New York by rail at 16½ cents per hundred pounds, which had to be added to the water rate from New York.

I am exceedingly sorry that I was unable to appear before this committee in person and hear the testimony given by the representatives of the interior cities, such as Chicago. I understand there were a number of representatives who appeared in opposition to the bill, and I venture to say that not one of them but came from a city which for years has been favored by some sort of discrimination. Commissioner Clark, of the Interstate Commerce Commission, when he appeared before the Senate committee stated that an absolute long-and-short-haul clause would upset a very desirable condition in the North-east, but when questioned by Senator Poindexter he stated that this

territory had less violation of the fourth section than almost any other territory in the country. When Commissioner Clark was asked by Senator Poindexter the condition along the Great Lakes he stated that there was practically no violation of the fourth section at the present time, because the railroads had acquired the boats on the Great Lakes, so that on the Great Lakes they had done exactly what they had done in other sections of the country where they had been permitted to do so by acquiring and controlling the water carriers or else putting them out of business. Mr. Mann stated in his testimony before the Senate committee that the canal company at one time got an injunction against the Baltimore & Ohio Railway Co. restraining it from operating its railroad along the canal because the engines scared the mules on the towpath, but he did not carry the illustration to the end and show that the railroad bought the canal and turned the mules out to pasture, where they have been ever since.

I was born on a tributary on the Mississippi River and can very well remember when boats made their regular trips up and down the Mississippi and its tributaries. You may ride now from St. Paul to New Orleans on the railroad skirting the banks of the river and you can see hundreds of boats tied up at the banks and rotting at the piers. This has been brought about by the system of rail rates against which we are protesting. It has been said by some of the opponents of this bill that it would have a bad effect upon the Government control of railroads during the war, but I can not conceive of how this bill could in any manner whatever interfere with the Director General of Railroads in his operation of the lines. On the other hand, I believe it is one of the most important pieces of legislation Congress has before it. There never had been a time in the history of the United States when traffic has been so congested and it has been so important to our future welfare to have freight move, and it may mean the winning or the losing of the war. What would not any of us give to-day to have the boats plying upon the canals and rivers? And a very great effort is now being made to reestablish water traffic both upon the interior waterways and upon the oceans. Do you consider it possible to get one to invest in boats and barges for use during the war only? If they look forward to the use of their boats and barges after the war, they must be protected by legislation such as we are asking for so that the railroads will not be permitted to drive them out of business in the future as they have done in the past. The Interstate Commerce Commission has at various times stated that if railroad rates were increased at certain terminal points it would have the tendency to bring back water transportation, and the carriers have been allowed to continue discriminatory rates upon that ground and permission granted the carriers to maintain less than reasonable rates at the terminal points and higher rates at the shorter-distance points.

Ever since the beginning of this fight by the interior, which was commenced by Spokane some 29 years ago, the carriers have maintained that any reduction in rates to the interior would mean that they would have to go out of business at the terminal points. When this Spokane case was first started they were charging in many instances twice as much to Spokane as to the coast. I have in mind canned corn from Iowa. The rate from Iowa to the coast was \$1 a

hundred; that same corn, if stopped at Spokane, was charged \$2; and yet in 25 years the rates have been radically reduced at the interior points and the differential has been narrowed, and yet we find the rail carriers just as keen for the coast business to-day as ever they were, and the whole argument against this bill, as presented by the railroads and the coast interests, is that if they are not allowed to charge more for the shorter haul than for the longer haul they will have to discontinue the business of the longer haul. Upon that assertion they base their whole argument. I was present at a banquet given to the late J. J. Hill in Spokane a short time prior to the opening of the Panama Canal, and I heard Mr. Hill say that he would make the Panama Canal grow up with lily pads, and that he would do it without discriminating against the interior points. His proposal was that he would put on through trains from the East to the West, which would be made up of large cars very heavily loaded and move with the speed of express passenger trains. Last December, 1917, the star witness of the carriers, in supporting the proposed rates, which went into effect March 16, 1918, stated to me that he had made up his mind that if water competition returned, even to the great intensity of just after the opening of the canal, that the rail carriers could meet that intense water competition without discriminating at any less distant point. That it could be done by building large cars and by increasing the loading requirements. When schedule C was put into effect in 1915 the rates to both the interior and the terminal points were very greatly reduced, and upon these reduced rates the railroads made more net money than they ever had made before. This was accomplished by increasing the minima and requiring the cars to be loaded to capacity. By this method of making rates the general average increase per car, taking schedule C as a whole, was as follows: Average increase earning per car under schedule C, —.

	A.	B.	C.	D.	E.	F.
Spokane.....	\$93.89	\$57.05	\$74.70	\$46.00	\$59.83	\$30.56
Coast.....	57.92	44.75	44.75	37.89	37.89	38.20

Some of the items were increased in enormous amounts. Take, for instance, canned goods. By increasing the minimum from forty to sixty thousand pounds, the earnings per car were increased from—

	A.	B.	C.	D.	E.	F.
Spokane.....	\$186	\$144	\$160	\$128	\$144	\$98
Coast.....	70	70	70	90	90	110

Take bar iron. The minimum was increased from forty to eighty thousand pounds and the revenue per car was just doubled, or to Spokane it was increased.

	A.	B.	C.	D.	E.	F.
Spokane.....	\$408	\$328	\$344	\$292	\$308	\$268
Coast.....	280	200	200	120	120	120

This testimony bears out the prophecy of Mr. Hill and shows that while they reduced the rate in schedule C they increased their net earnings on the same business, the same movement of commodities, so that the argument made by the opponents of this bill that the railroads would have to go out of the coast business if this bill was passed is proven by their own witnesses to be a fallacy. It is interesting also to know that the opposition to this bill comes from the blanketed territory and the coast territories entirely. Now, if Pittsburgh, for instance, or Chicago had to pay more for lumber shipped from the Pacific coast than New York, you would hear a wail that would be heard in every department of our Government, but when lumber is shipped from the Pacific coast Chicago gets a lower rate than Pittsburgh and Pittsburgh gets a lower rate than New York. The same is true of magnesite, which is produced very largely in Spokane territory. When magnesite is shipped to Chicago it gets a lower rate than Pittsburgh, and when it is shipped to Pittsburgh, Pittsburgh gets a lower rate than New York and on no eastbound commodity is the fourth section violated east of the Missouri River.

I am firmly convinced that our coast friends care nothing for water transportation except as a means of compelling preferential rail rates. Mr. Jacobs, an extensive shipper of canned goods from San Francisco to eastern markets, testified in San Francisco in 1916 that a number of years ago the merchants of San Francisco organized a boat line for the purpose of compelling the railroads to lower their rates. That they ran the line for a few years and lost, if I recollect correctly, \$350,000; that they pocketed their loss, but in the reduction of rail rates they made some \$5,000,000, and threatened the railroads and the commission in 1916 with that same treatment if the carriers raised the rates to the coast and if the commission did not permit the carriers to continue to charge more to the interior than to the coast. This witness was put on before the commission by the San Francisco Chamber of Commerce, and for the express purpose of blackmailing the railroads and the Interstate Commerce Commission into continuing preferential rates, and Mr. Jacobs further testified that he was in the East in 1916 and saw Mr. McAdoo and other prominent people with the view of interesting them in putting on just such a blackmailing line of boats.

It is a favorite argument of those that are opposed to this kind of legislation to say that if this bill is passed it will do great injustice to the long line of railroads which is competing with the short line. I think that this is just as fallacious as the argument they used in favor of water competition. Why should not the traffic move over the short line? Why should the long line have the right to compete with the short line unless it could do so without discriminating? The fact that that system has been permitted has led to a regular railroad monopoly. Take, for instance, the Northern Pacific from Spokane to Tacoma; it is some 90 miles longer than the Milwaukee, yet to meet the situation the Northern Pacific at one time started to build a cut-off between Lind and Ellensburg, which, if it had been built, would have made the Northern Pacific the short line between Spokane and Tacoma. They actually did build some 18 or 20 miles, but as railroads, in the exercise of their God-given right to

monopolize, as they always do, they got together with the Milwaukee, and some sort of an agreement was made, tentative or otherwise, whereby the Milwaukee passenger trains would make no better time between those points than the Northern Pacific and the freight moved between those two points should move at the same time over the Milwaukee as the Northern Pacific, and the Northern Pacific was allowed to compete at Seattle and Tacoma and violate the fourth section all along its long line, so why should it build its short line? That sort of a combination or agreement illustrates what the railroads always do in these matters. Take, for instance, the fight which has been carried on before the Interstate Commerce Commission for the past two years. The Northern lines, and I also believe the Union Pacific, were in favor of removing the discrimination existing when the boats went out of the coastwise business, and they actually sent representatives to the Interstate Commerce Commission for the purpose of saying to the commission that they thought the rates should be readjusted on account of changed conditions, but the Southern Pacific Railroad used the influence of its Sunset route through Galveston and held a club over the other roads and compelled them to fight the case; and it is very significant that during that whole two years of litigation the Southern Pacific, with their attorneys and traffic representatives, were the ones who carried the laboring oar and carried on the bitter fight; and it is also significant that the opposition to this bill is being presented by the Southern Pacific traffic managers and their attorneys; and Mr. Spence, who was the star witness in the last two years' fight, is found again before this committee and the committee of the Senate as the star witness in opposition to the bill.

Before the Senate committee I asked the railroad attorneys whether they were representing the United States Government or the director general or the interests of the railroads, and they replied that they were representing the reversionary interest of the railroads, but when asked whether or not the reversionary interests of the railroads were paying them or whether they were drawing their pay from the revenue of the Government derived from freight rates they said they did not know. I was interested in hearing Commissioner Anderson say to the Senate Committee on Friday, January 11, that the collection of freight charges was a species of taxation. If that is so the unjust taxation collected from the interior in the past two years since water competition ceased, as found by the Interstate Commerce Commission, in comparison makes the Boston Tea Party seem like the sulking of a wilful bunch of unruly boys.

In order that you might get an idea of what it means I have attempted to make an estimate of the increased revenue to the carriers which will result by the increase of the Pacific Coast terminal rates to the level of that of the interior and the increases upon which export traffic through the Pacific coast ports and I am convinced that it will amount to at least six millions per year and I am also convinced that that estimate is too low by at least five million. In other words since the cessation of water competition in February, 1916, to February 1, 1918, the business interests of the Pacific coast terminal cities will have received subsidies to the extent of from 12 to 20 millions of dollars, received in the shape of less than reasonable rates.

The transcontinental carriers in the last Spokane case submitted a statement of tonnage compiled from their records, giving the transcontinental tonnage to the Pacific coast terminals and the intermediate territory for the months of January, April, July, and October, 1916, which shows the following:

	Tons.
Total of transcontinental tonnage, domestic and export for above period	1,745,925
Deduct export tonnage	240,191
Coast and intermountain tonnage	1,505,734
Deduct coast domestic tonnage	506,730
Intermountain or excess-rate tonnage	999,004

The above figures represent four months; for one year we have the following:

	Tons.
Coast domestic tonnage	1,520,190
Intermountain or excess rate tonnage	2,994,312

The average excess in transcontinental rates to intermountain territory is approximately 20 cents per hundredweight, or \$4 per ton.

In other words, the intermountain territory has been paying approximately \$4 per ton as an average, more than Pacific coast terminals upon similar traffic, as a whole.

From the foregoing figures the following is demonstrated:

Average excess transportation tax paid by intermountain territory:	
Per year	\$11,997,248.00
Per month	998,104.00
Per day	33,270.00
Average excess war transportation tax that will have to be paid by intermountain territory upon similar amount of traffic:	
Per year	359,917.44
Per month	29,993.12
Per day	999.77
Approximate average loss of war-tax revenue on transcontinental traffic for Pacific coast terminals:	
Per year	182,422.80
Per month	15,201.90
Per day	506.73
Approximate average loss on revenue transcontinental traffic to Pacific coast terminals:	
Per year	6,080,760.00
Per month	506,730.00
Per day	6,891.00

Approximate loss above shown represents only the loss if the terminal rates were only as high as the intermediate rates, and if rates were to be constructed upon a basis to comply with sections 1, 2, and 3 of the present act to regulate commerce the loss would be considerably greater than the estimates shown.

I desire for a moment to call your attention to the great economic waste caused by this manner of making rates. Commissioner Prouty, in the original percentage case, said: "It is a manifest economic waste to haul traffic over the Cascade Mountains and back again. The interests of the carriers and of the public as much require that this business should stop at Spokane instead of going on to Seattle as that it should originate in the Middle West instead of upon the Atlantic seaboard." For the purpose of illustration of this great

economic waste of transportation as a result of the present rate system under the existing fourth section of the act. I want to refer you back to the figures above shown that the approximate annual domestic tonnage to the Pacific coast terminals for the year 1916 was 1,520,190 tons. The average car is usually loaded about 20 tons to the car. Divide this into the total coast domestic tonnage and it will be found that it would require 76,000 cars to handle this 1,520,190 tons of domestic coast tonnage. It has been estimated by various parties at various times that approximately 25 per cent of the coast domestic tonnage is distributed back to the interior, and the haul back to the interior the cars would load about 10 tons to the car, which would be 39,000 out of the 76,000 cars. Assume, then, that it requires approximately from four to six days more time to bring this traffic to the terminals, thence back over the same rails to the interior points, than it would require if distributed from the logical interior intermediate distributive point, you would, under this present rate system be using the railway equipment upon this proportion of the traffic that is ultimately used in the interior 152,000 car days wasted every year, to say nothing about the waste of man power, wear and tear of equipment, and increased operating expenses to the carriers themselves.

The very purpose of making a lesser rate to the more distant point is to encourage the movement of traffic the long way. Mr. Graff, secretary of the Boise, Idaho, Commercial Club, in Spokane in 1916 testified that a car of canned goods would move from Boston, Mass., to Seattle or Portland at a rate of 75 cents per hundred pounds and from Seattle back to Boston at a rate of 62½ cents per hundred pounds, or a through rate of \$1.37½ per hundred pounds for the coast-to-coast movement both ways. The rate one way upon the same goods to Boise, Idaho, was \$1.10 per hundred. In other words, carriers would handle a car of canned goods clear across the United States and back again for only 27½ cents per hundredweight more than it would charge for handling the same goods one way from Boston to Boise, Idaho. The approximate distance from Boston to Seattle or Portland and thence from Seattle or Portland back to Boston is 5,500 miles, while the distance one way from Boston to Boise is approximately 3,000 miles.

For 28 years Spokane has been protesting and fighting against the discrimination which is unjust, and during that entire time the most satisfactory relief obtained was obtained by boycott and compromise at times when it seemed hopeless to expect relief by the enforcement of the laws. In the very last decision of the Interstate Commerce Commission they find, after naming some 115 items, "some of the rates are not unreasonably low, and no relief should be granted as to the rates on such commodities even under conditions similar to those which existed the year following the opening of the Panama Canal," and yet these very rates were in violation of the fourth section of the act for all these years, and the interior was constantly protesting against the continuation of the discrimination.

The rates that were proposed by the carriers in the tariff offered in compliance with the last order of the Interstate Commerce Commission are still less than reasonable to the Pacific coast terminals according to the railroads, thus causing an extra burden upon the

interior and requiring higher rates to those points than would be necessary if the Pacific coast terminal rates were established on a reasonable basis. Had the first report of the examiner been adopted the rates to the Pacific coast terminals would have been practically upon a reasonable basis, and the city of Spokane would have had a lower rate from eastern defined territory than the coast terminals, which every reasonable man would agree she is entitled to under present conditions.

Mr. Toll, the witness for the rail carriers at Portland, Oreg., in November, 1917, testified as follows:

Mr. CAMPBELL. Mr. Toll, as I understand it, when these rates were proposed to the coast, you did not attempt to fix reasonable rates to the coast—the proposed rates to the coast?

Mr. TOLL. No.

Mr. CAMPBELL. And if the proposal, as suggested by Mr. Lothrop this morning was carried into effect you would be obliged to put perhaps a much higher rate to the coast than you have proposed in this adjustment?

Mr. TOLL. In many cases.

Mr. CAMPBELL. In other words, because the commission commented on the possible return of water competition you felt justified in still carrying a less than reasonable rate to the coast?

Mr. TOLL. That is true.

Mr. CAMPBELL. In a great many of the items—probably not all?

Mr. TOLL. In many of the items.

Mr. CAMPBELL. Possibly all excepting those 115 items?

Mr. TOLL. Well, I think even in that case those rates are less than reasonable.

Mr. CAMPBELL. So that in this adjustment the coast is getting a much more favorable adjustment than if you carried out the proposal made by Mr. Lothrop?

Mr. TOLL. Yes, sir.

And when Mr. Lothrop was pressed as to his suggestion that the rate should have been offered to both interior and to the coast upon the basis of reasonableness admitted that the fixed rates upon such a basis would take from one to five years and that what they really wanted was as much delay as possible.

Mr. Wettrick, manager of the traffic bureau of the Seattle Chamber of Commerce, also testified in December, 1917, in Portland, that the rates which were then in force were subnormal, and yet he and the other coast cities were fighting to hold those subnormal rates at a time when they were compelled to admit there was no controlling water competition, but potential competition only. Those same forces are here before this committee backing up the railroads in their opposition to this bill and fighting for a less than reasonable rate. It can not be denied that when one section of the country is given a less than reasonable rate some other section of the country must be charged a more than reasonable rate in order to make up the deficit caused by such a rate structure.

In closing I wish to go on record as in favor of an absolute long and short haul clause as provided for in the bill now under consideration before this committee.

The CHAIRMAN. We will now hear Mr. Freehafer.

STATEMENT OF MR. A. L. FREEHAFFER, MEMBER OF PUBLIC UTILITIES COMMISSION OF IDAHO, BOISE, IDAHO.

Mr. FREEHAFFER. I am a member of the Public Utilities Commission of the State of Idaho, and in my official capacity represent the people of that particular portion of the intermountain country, and

we wish briefly to state to you our complaints of the conditions as they have existed in the past and the conditions which we face for the future after this temporary arrangement ceases.

Mr. HAMILTON. Are you satisfied with the present conditions?

Mr. FREEHAFFER. We have assumed all along that we would be satisfied with conditions when we were placed on an equality with the coast, as we now are.

Mr. HAMILTON. I say, you fear after this war condition and after the canal navigation is restored that you may, under some order of the Interstate Commerce Commission, be brought back to a condition approximating the condition that existed heretofore?

Mr. FREEHAFFER. We know we shall be brought back to face those same conditions, from the policy that has been adopted by the Interstate Commerce Commission under the amended fourth section, as amended in 1910. In answer to the objections that have been made here to giving us relief at this time, we will say again that we must have a definite statement of policy before we can undertake the development of our country, because it is well known that the condition existing at present is only temporary, and that we are bound to go back to the old conditions, and knowing these things, unless this fourth section is made absolute, we can not go back with confidence or with any basis of reasonable stability on which to establish any business in that interior country.

And we want to say that these complaints are not intended as a criticism of the Interstate Commerce Commission, but to suggest to you, as Members of Congress, that you should adopt a policy on this question. The question is, shall we permit the railroads, on the plea of necessity of meeting water competition to make rates so low as to destroy water competition or prevent water carriers from entering the field. We believe that in the light of past experience we can say that the attitude that has been assumed by the railroads and that they have been permitted to carry out by the Interstate Commerce Commission has, to a large extent, resulted in destroying water competition. They have been permitted to have control of water carriers and permitted to get possession of canals, the result of which has been to junk most of our water carrying facilities, and the railroads have been doing the bulk of the transportation business over the rail lines entirely.

We believe the time has come to announce a policy that will encourage water carriers to take a more active part in all transportation problems than they have in the past. We believe, in short, we should encourage the merchant marine for domestic traffic as well as Foreign traffic. This we hold to be the question of policy to be settled by this bill.

Mr. HAMILTON. May I interrupt you to ask one question right there? And that is, whether you have made any investigation as to the extent to which properties engaged in water transportation coastwise have entered into combinations to control freight rates?

Mr. FREEHAFFER. The experience after the opening of the Panama Canal would not sustain any supposition of that kind, because a number of water carriers went into the business at that time and started to compete for the business, and that is the time when the railroads made the application for fourth section relief and got it from the Interstate Commerce Commission.

Mr. HAMILTON. You will remember that the Committee on Merchant Marine and Fisheries, of which Mr. Alexander, of Missouri, is chairman, made an exhaustive investigation as to the extent to which combinations had been entered into by carriers coastwise; there was, as I remember it, a startling revelation of combination, fixing rates arbitrarily. Have you had any occasion to investigate that?

Mr. FREEHAFFER. No; we have not. But, as I said before, the policy adopted by the water carriers, coast to coast, after the opening of the Panama Canal would indicate there was no danger of unduly high rates on that account between coasts; the ships established rates much lower than the existing all-rail rates, and the railroads went before the Interstate Commerce Commission to get their relief at that time, so that the entering of the water carriers into competition reduced the existing rates at the coasts very materially.

Mr. HAMILTON. One of the reasons why some of the members of this committee voted to charge coastwise traffic toll for passing through the canal was that they were involved in combination, and the conclusion was reached that no consumer would get a commodity a fraction of a cent cheaper by reason of charging them no toll for the use of the canal. I simply wanted to interrupt you long enough to make that suggestion.

Mr. SHAUGHNESSY. I would suggest for your information that we will have a witness on water competition, Mr. Frank Lyon, of the Luckenbach Steamship Co.

Mr. HAMILTON. Would it be well to turn over to combinations by water the whole control of the situation?

Mr. ESCH. The Shipping Board can control coast rates.

Mr. FREEHAFFER. Just a word as to the conditions in Idaho. North Idaho is something like 525 miles from the Pacific coast, average distance, and southern Idaho is an average of 670 miles from the Pacific coast points; and we in Idaho have suffered a greater discrimination than Spokane and other intermediate points which are nearer the coast. I will give just two or three illustrations to show how this has affected us in the interior even to a greater degree than to those points located nearer the coast than we are by comparison with La Grande, the halfway point between Boise, Idaho, and Portland, on the coast. On cotton piece goods from the eastern territory to the coast the rate is \$1.35. The back haul to La Grande is 68 cents, making the rate there \$2.03, while to all points in southern Idaho the rate is \$2.27, or 24 cents higher than to the intermediate point halfway between Boise and Portland; that is, we are under a greater handicap on account of these back-haul rates than those halfway points between us and the coast.

Another illustration, for north Idaho: Hardware, from group A, or the eastern points, to the Pacific coast is \$1.50, the back haul to Spokane is 63 cents, or the rate to Spokane is \$2.13, while the rate to Wallace, Idaho, about 100 miles farther east than Spokane, is \$2.27, or 14 cents higher for a 100-mile shorter haul than to Spokane.

These two illustrations are given to show that conditions in Idaho are aggravated over those of the points west of us and between us and the coast.

On eastbound traffic wool is a good illustration. Portland is the principal wool market for the intermountain country. The rate

from the Pacific coast, or Portland to Boston, is \$1; from Boise, 500 miles farther east, \$1.71. That is for baled wool; and in sacks the rate from Boise to Boston is \$1.98. So that if it were shipped in sacks they could ship it 500 miles west to Portland and back again through Boise to Boston for less money than we can ship from Boise straight through to Boston, and if we are attempting to ship that wool to Portland to be baled we pay a rate of 77 cents for that 500 miles, while from Portland, clear across the country, 2,400 miles or more, it is only \$1.

The wool center for this intermountain territory is Portland, outside of the wool-producing territory entirely. That business has been built up clear out of our territory. It has taken away from us a natural resource which we think should belong to us, because we produce the great bulk of the millions of pounds of wool that is produced in the West in that interior country, and yet under the rate structure that the carriers have imposed upon us of \$1 from Portland to Boston and \$1.71 Boise to Boston, we have to give up all that business and simply sit down as producers alone and can not deal in the commodity we produce.

Mr. HAMILTON. You spoke about shipping wool in bales from Portland and shipping in sacks from Boise. Can you not bale the wool at Boise?

Mr. FREEHAFFER. It could be baled at Boise, although they do not do any baling there. And as I suggested, the former discriminatory rate allowed them to send wool to Portland and then back across the country to Boston, the result being that the wool-trade center was built up at Portland and the business was taken away from us entirely; and you know how those centers of trade operate.

They impose upon us, we think, because we are far from the seat of power and influence, and we should like to simply put up to you people in the intermediate East how it would appear to you if the freight on a carload of lumber, say, from Idaho should cost you \$200 at Detroit or Pittsburgh, while the rail carrier would carry it right on through your town and over to New York City and charge them only \$129 for the car. We believe there would be such a howl go up that they could not maintain that kind of a rate in your territory or impose such a discrimination on you people here. They do not attempt to discriminate against the eastern intermediates, as they have been discriminating against our intermountain territory during all these years, because you would not stand for it.

Mr. HAMILTON. Is it not true that they do discriminate to some extent along the eastern coast?

Mr. FREEHAFFER. There are some discriminations, but not to any great extent. I understand we have some discrimination in our favor in sugar to Chicago—we can ship our sugar cheaper to Chicago than to Omaha.

Mr. WINSLOW. Does not the center of population affect that any?

Mr. FREEHAFFER. They talk about that, and I will come to that in just a moment, in regard to production in Idaho, to show you what we do.

Another illustration that I want to give you of how this has operated in the past, which will explain probably some of the appearances here before this committee, is the rate that was maintained for

many years until just two or three years ago on books. For many years the maximum rate to interior points was the rate from eastern defined territory to the Pacific coast plus the rate from the coast back to the interior. That was the old basis of back haul under which the country has been operating for many years. To illustrate this, the charge on 100 pounds of books from New York, Pittsburgh, or Detroit to the Pacific coast was \$2, and the rate on this same shipment from the Pacific coast to Boise was \$1.29, making the rate from these eastern points to Boise \$3.29.

Mr. HAMILTON. Now, what would the rate have been if those books had been shipped direct to Boise from the eastern point?

Mr. FREEHAFFER. \$3.29. That was the rate that was maintained for years. Now, how was this amount divided? What I want to get at here is the division of those rates and what roads got the benefit of this high rate on the western side. How was this amount divided among the roads participating in the hauls? If the shipment was from New York, the line from New York to Chicago got 25 per cent, or 50 cents, for its 1,000-mile haul, leaving \$1.50. From this was taken 5 cents for Mississippi River toll, leaving \$1.45. The line from Chicago to the Missouri River got 15 per cent of this remainder for its 500-mile haul, or 21½ cents, leaving \$1.23½. From this was deducted 5 cents for Missouri River toll, leaving for the line from the Missouri River to Boise \$1.18½ for its 1,300-mile haul. And by the way, that is Union Pacific lines from Omaha on through to the coast. This last carrier added the back haul of \$1.29, thus getting for its portion \$2.47½.

Mr. HAMILTON. Was there any division among the carriers?

Mr. FREEHAFFER. Of course, the through rate of that \$3.29 they divided up among the eastern roads, the Michigan Central and the roads to the Mississippi country, and from the Missouri River on west.

Mr. HAMILTON. A back haul?

Mr. FREEHAFFER. We will show you where this back haul came in. The whole back haul went to the western roads.

Mr. HAMILTON. That is what I refer to. Was there a division of the back haul through?

Mr. FREEHAFFER. The terminal carrier got all of that. There is no division. They got \$2.47½, or 12½ cents more than their local first-class rate of \$2.35 from Missouri River to Boise, by hauling in car-loads clear across the country and back than if they had hauled simply from Omaha to Boise. And they started out, you remember, with a \$2 rate clear across the country, and they ended up by getting \$2.47½ of it.

If the shipment originated at Pittsburgh, the line east of Chicago got only 15 per cent, and the lines west of the Missouri River got larger returns; and if originated at Detroit, still larger returns.

This probably will throw some light on the ability of the Oregon Short Line Railroad, which runs right through that intermountain territory and serves practically the entire intermountain territory, going from Omaha to Huntington, Oreg., just over the Idaho line, enabling the Oregon Short Line Co. to pay 10.36 per cent on its operating property and at the same time to have accumulated enough to invest \$166,000,000 in stocks and bonds of other roads which it owns at the present time.

The CHAIRMAN. Is that the one which bought out the New York Central?

Mr. FREEHAVER. I believe it bought 200,000 shares. It has these investments of \$166,000,000.

Mr. HAMILTON. Take the transportation eastward. Suppose you are shipping books or some other freight from Chicago through to Boston, or, say, to Albany; would there be a considerable back haul to an eastern coast point?

Mr. FREEHAVER. That is what we are complaining about. They impose the back haul on us in the West and do not impose it on you people in the East.

Mr. HAMILTON. They do not do it in the East?

Mr. FREEHAVER. Not at all.

Mr. HAMILTON. What is the argument, then, in favor of making no back-haul charge along the eastern seaboard and a back-haul charge along the western seaboard?

Mr. FREEHAVER. That is what we can not understand, and that is why we are objecting. We will have to ask the carriers to explain that.

Mr. HAMILTON. That condition has gone now. But I was wondering about the logic of it.

Mr. FREEHAVER. That is what we have been wondering all these years.

Just to illustrate with one commodity the effect on Idaho dealers: Iron bars from Pittsburgh to Portland, on the coast, 65 cents; to Boise, 500 miles nearer to Pittsburgh, \$1, or a differential in their favor of 35 cents per hundred pounds.

Then, in distributing from Boise and Portland under these rates: Duncan, Oreg., just halfway between Portland and Boise, has a rate out of Portland of 49 cents per hundred, and to the same point out of Boise we have a rate of 63 cents a hundred. These bars can be carried through all the way to Portland and back, 250 miles, halfway to Boise, for \$1.14 per hundred, while if they were sent to Boise and reloaded out of there and shipped to Duncan, Oreg., it would cost \$1.63, or a difference of 49 cents against Boise.

Mr. HAMILTON. Have they ever taken advantage of those local rates to ship to some point in your local territory and then rebill them to a point nearer?

Mr. FREEHAVER. We could not on account of the local rate; it would be too high.

Another point that was brought out the other day before the Senate committee was this: It was stated by the roads that these rates should never be made lower than absolutely necessary to meet water competition; that they would figure out some rate, which they called an equivalent rate, to permit them to meet water carriers on equal terms at coast points. We want to see whether they have always done that. The statement was made the other day that these rates by rail probably would be a little higher to be an equivalent rate than the all-water rates would be, because of the loading and unloading and the transfer at the terminals; and that the railroads could meet this water competition and charge a higher rate than the water carriers would charge because of the extra conditions imposed; and then, of course, the railroads have the added feature in their favor

that they would furnish quicker transportation, and people would give some consideration to that, so that even with a higher rate on the railroads they might still hold the business to the coast.

Mr. HAMILTON. That is true; there is an advantage of time.

Mr. FREEHAFFER. There is an advantage of time, an advantage of unloading at the docks and transferring, and so on. Usually with the car you can run right up to your warehouse and unload from the cars, while from the boats there is usually a transfer, and loading at the water front in the East would be the same way. So that they do not need to make rates absolutely as low as water rates to compete with the water carriers.

The examiner of the Interstate Commerce Commission in his report in one of our fourth section cases shows a published rate on canned goods by boat from New York to the Pacific coast of 52½ cents. The rate on canned goods from Chicago to New York is 31½ cents. Suppose it should go from Chicago by rail to the Atlantic coast and then around by way of water to the Pacific coast, the rate would be 84 cents; but they have established an all-rail rate of 75 cents, not only meeting water competition but putting the rate so low as to discourage any water carrier from going into the business of carrying canned goods around that way from Chicago.

Mr. SCANDRETT. Suppose they took it from New York by rail, what would be the rate?

Mr. FREEHAFFER. Then your question is, the rate from New York?

Mr. SCANDRETT. Then it would be 52½ cents water as against 75 cents rail?

Mr. FREEHAFFER. Yes; but here you come to Chicago with your 75-cent rate—haul goods from Chicago to the Pacific coast for 75 cents; and if you haul it cheaper than you need to, somebody else has got to make up that difference—to make up that loss of revenue—because a rate of 84 cents from Chicago would enable you to meet water competition at San Francisco. But instead of that you give them a rate of 75 cents. Somebody has got to make up that loss of 9 cents which you might otherwise get.

Mr. SCANDRETT. Would the rate of 81 cents permit the man at Chicago to compete with the man at New York?

Mr. FREEHAFFER. That is competition between those two cities. That is a question as to where the commodity is furnished.

Mr. WOOD. If he could not, then the carriers from Chicago could not handle it.

Mr. FREEHAFFER. But you give that advantage to the Chicago business in order to permit him to compete.

Mr. WAY. Mr. Freehafer, do you admit the right of the railroad to say which manufacturer shall do business and which shall not?

Mr. FREEHAFFER. We are here protesting against that system of making rates.

Mr. HAMILTON. That is what the Interstate Commerce Commission stopped.

Mr. FREEHAFFER. They have not stopped it there.

Mr. HAMILTON. The power to build up a business in one territory against the business in another territory by the arbitrary power to make rates. I assume unjust discrimination now no longer exists?

Mr. FREEHAFFER. It does.

Mr. HAMILTON. Owing to the function of the Interstate Commerce Commission.

Mr. FREEHAFFER. The very reason for that 9 cents lower rate to Chicago—lower than the rate from Chicago to New York and New York water rate to San Francisco—is made for the purpose of building up the Chicago canning industry; that is to give them a chance to come into the San Francisco market on the same basis as the New York man. They are simply building up the Chicago man on the equality with the New York man. We want some of that equality in competition, generally known as market competition.

Mr. HAMILTON. Do you not have to recognize certain necessities?

Mr. FREEHAFFER. If it is the policy of the Government to permit railroads to build up a city here and built up a city there according to their own desires or interests and to prevent the building of cities and the establishing of industries at other points, we have nothing to say, except that we believe it is a wrong policy.

Mr. HAMILTON. Have we not to consider the interests of the consuming public?

Mr. FREEHAFFER. Sure. We are consumers out there. We want an even break. That illustration was simply to show the handicap under which Idaho is operating. We want to show how the rates that have been maintained operate against the development of our interior country. Suppose, for instance, we are installing a water system in the city of Boise, where we have 25,000 or 30,000 people. The iron pipe for that water system would cost more by many thousands of dollars than it would cost to lay the same pipe down on the coast 500 miles further west, and that added cost is a perpetual tax upon the inhabitants of our city because they have to pay returns on the investment; and in the building of the Arrow Rock Dam, which belongs to the whole country, out there near Boise—there was used in that dam about 16,000 tons of cement from Kansas, and that 16,000 tons of cement took a rate from Kansas to Boise of 55 cents per hundred, while the rate from Kansas to the Pacific coast was 40 cents, or a handicap against us of 15 cents per hundred pounds, or on 16,000 tons of cement it amounted to \$48,000 paid for hauling that cement from Kansas to Boise more than would have been paid for hauling it from Kansas to Portland or some Pacific coast point for a haul 500 miles longer.

Mr. HAMILTON. Who built that dam?

Mr. FREEHAFFER. The United States Government, and they paid \$48,000 more than they would have had to pay for same shipment to the Pacific coast.

The CHAIRMAN. Was that in competition with the rate from Kansas down around by water?

Mr. FREEHAFFER. That is the only excuse they have had for it—water competition.

A little iron bridge built up in north Idaho across the Priest River was calculated on a few days ago, and it was found that the iron which came from Pittsburgh or some other eastern point cost \$1,500 more laid down there than the same iron would have cost if taken on 500 miles farther to the Pacific coast.

These discriminatory rates apply equally on the farmer's wagon and his wife's range and all these heavy articles, and I may say

right here, in passing, that this schedule of class C commodities which we were talking about covers the great bulk of all the shipments to the interior. I believe the figures were something like 1,900,000 tons out of some 2,200,000 and odd tons carried, the greater part of them being in this schedule, which is subject to these discriminatory railroad rates.

It was stated the other day before the Senate committee that because this system had withstood the assaults of the intermediate West for the last 8 or 10 years it must be all right; and again I want to refer to the conditions in the East. If those discriminatory rates had been imposed upon the eastern intermediates, do you suppose they could have withstood the assaults of your eastern intermediate cities for 8 or 10 years? I think they would have fallen long ago.

There has been some suggestion here of our complaint at delay, and we have a right, I believe, to complain, because just on the 15th of this month we got our relief from discriminatory rates, compelled, as we were told, by water competition, when it is shown that there has been absolutely no water competition for the last two years. It took us two years to get away from the paying of rates higher than the coast, because of water competition, and there has been no competition there for two years.

The railroads attempted to convince the Interstate Commerce Commission in these hearings that they should not level out these rates because of potential water competition. They said: "We must continue these discriminatory rates to the interior, because these boats are going to come back after awhile, and it is not worth while to take away these discriminatory rates, because you will have to put them back again after the water competition returns."

It has been suggested here to-day, I think, that the question of population and the density of traffic has entered into this question, and we have been taunted in the past by the statement we are small and our commerce insignificant, and we want to say in reply that we believe justice is not measured by the size of the recipient. To an honest nation a treaty with little Belgium is just as sacred as if made with the most powerful nation on the globe, and we feel that we are entitled to the same treatment as the eastern intermediate territory, even though we have not as much traffic as some of the eastern manufacturing centers; but, after all, we believe we can make a creditable showing in traffic furnished to the railroads. Here is our showing for the year 1916, taken from the annual reports of our carriers:

Agricultural products, 1,200,000 tons, 80,000 cars; products of animals, 280,000 tons, 20,000 cars; products of mines, 1,000,000 tons, 25,000 cars; products of the forest, 2,260,000 tons, 110,000 cars; products of manufacturers, 395,000 tons, 16,000 cars, and miscellaneous products, 103,000 tons, 4,000 cars; making our total production which we furnish to the railroads for movement per annum 5,238,000 tons, or 255,000 cars.

A liberal estimate of the tonnage carried across our State to the Pacific coast ports is less than one-half of the amount furnished to the carriers in Idaho.

They make the statement that these low rates to the coast furnish only a little more than out-of-pocket cost, but if they furnish only a little more than out-of-pocket cost somebody must make up that

deficiency. If the traffic carried across Idaho to the Pacific coast, which is about one-third as much as the traffic furnished to the carriers in Idaho, pays 1 per cent interest the other two-thirds will have to pay 20 per cent in order to make the carriers' income of over 10 per cent.

We should like to put this question to you gentlemen: If there were no intermediates—suppose that entire arid country had not been settled, how would the carriers meet competition at the coast? Who would pay the shortage in revenues if we were not there to make up that loss?

These transcontinental roads were built to reach the Pacific coast—to take care of the transcontinental traffic. There was little or no intermountain traffic when they were built, but now they say they can not exist without our help—without charging us rates high enough to pay liberal returns on the value of their roads and equipment so that they may compete for the coast traffic which pays them little or no profit.

Under their theory and in the light of their arguments they could not meet water competition at all if we of the intermountain territory were not there to bridge them over.

The railroads have sometimes expressed a doubt as to the wisdom of their policy of discriminating against the interior West. Many years ago Paul Morton, vice president of the Santa Fe, when asked why he did not try to build up the Pacific coast intermediates as he was building up the Atlantic coast intermediates said: "I am not sure that we will not have to do that some day." We believe that day has come, and the railroads should now develop the interior West. We believe that it is not only justice to us but sound wisdom on the part of the railroads, and we ask you, gentlemen of Congress, to aid in bringing about this change in policy on the part of the railroads by giving us this absolute long-and-short-haul law. The Interstate Commerce Commission has expressed itself with some doubt as to the wisdom of its policy of granting discriminatory rates against the interior West. In 1911, in *City of Spokane v. Northern Pacific Railroad Co.* (21 I. C. C. 424) the commission said: "To a disinterested observer it would seem to be in the true interest of these transcontinental lines, which begin at the Missouri River, to make rates which would build up interior points as against the coast. The haul to these points is shorter and less expensive. The distribution from these points is easier, but, above all, the traffic which is created at such a point belongs to the rail line which creates it, while the traffic which is fostered upon the coast is the prey of every vessel which sails the sea. Carriers in the future will doubtless adopt this method and will voluntarily make rates to interior points like Spokane which will enable these localities to compete with coast cities."

The rail carries have not done it, and that is why we are here asking you to help us to compel them to put us on an equality with the coast.

The Interstate Commerce Commission seems to have finally adopted the theory that since the railroads have so far succeeded in holding the commerce of our country they must be allowed to use the weapon of discriminatory rates to hold it. We do not believe the right to transport our commerce belongs exclusively to the railroads. We

do not believe that our Congress has expended a billion dollars on rivers and harbors only for the purpose of beating down railroad rates at terminal points to the disadvantage of interior points.

We believe, Mr. Chairman, that blanket rates to this western country as maintained in eastern territory is a sufficient handicap to enable them to meet this water competition. We believe if we agree that they shall have the same rate to the coast as we pay to the interior for from 400 to 800 miles shorter haul, that should be enough to enable them to meet water competition—that is, if they charge a reasonable rate from the east to our intermediate country, and then carry the commodity free; that is, with no additional charge to the coast they will be able to get a fair share of the tonnage on the coast in competition with water carriers, and we believe that is enough to enable them to compete for what will be a fair share of that tonnage.

We are at a great disadvantage in this fight, because we must finance our operations by voluntary contributions or by state taxation, while the railroads compel us to finance their fight by imposing upon us higher rates; and this fight will never end if this policy of the granting of fourth section relief by the Interstate Commerce Commission is not reversed by Congress. As soon as the water carriers make a reduction in a rate that will enable them to get a portion of the traffic between the coasts, the railroads will immediately appeal to the Interstate Commerce Commission to grant them relief and permit them to go into competition with the water carriers. The railroads will never be satisfied with anything less than all of that traffic, and they will be fighting before the Interstate Commerce Commission continually to take all the traffic from the water carriers, and we believe it is wrong to permit them to continue that policy.

It seems to me that the Interstate Commerce Commission policy of permitting these low rail rates to the coast cities is in the interest of building up large cities at the expense of the building up of the whole interior country. New York and San Francisco and other big cities have not been a great success in our "melting-pot" theory of government, and we believe the policy of the Government should be changed so as to develop the whole country. It seems to me that it is time for Congress to take hold of the development of our country to the end that we may be made a great, well-balanced Nation.

We have millions of acres in Idaho susceptible of cultivation, but we must not be continually handicapped by discriminatory rates if we are expected to develop that country. We can not induce people to come in there to build cities and develop industries unless we have assurance that we shall be treated on an equality with the rest of the country. That is the thing that we want now above all, and that is the argument we bring against those who say we should not disturb the rates at this time because the railroads are in the hands of the Government. We want right now to have people who are looking toward the West with the idea of development to know that they are going to be treated fairly by the railroads of the country; that they are not going to be discriminated against in the matter of rates in the future.

We do not wish, however, to have it understood that we are discouraged, that we are poverty stricken in the West.

We have been fairly prosperous in spite of these handicaps, but we are entitled, we believe, to the benefits of our good climate and our fertility of soil and our unharnessed rivers—to all our God-given privileges. Give us a chance and we will use them.

The negro slave was usually happy under his master, but this was not, in truth, a land of freedom while he was held in slavery, and while we of the interior West are compelled to pay tribute to the Pacific coast, it is not a land of equal opportunity. We appeal to you gentlemen that you enact this bill into law in the light of that sacred principle of American democracy, "Equal rights to all, and special privileges to none."

Mr. FRANK LYON: I want to make a statement before the committee on this fourth section bill in the interest of the water lines, which I represent. I can not say that I am for or against the bill. Congress has to decide this question of policy, but it is important that the committee should have the views of the water lines as to the effect upon the merchant marine.

The CHAIRMAN. There will be no rush to consider the bill. There are a lot of other more important matters ahead of the committee, and this hearing was only given for the reason that these gentlemen here are from the Pacific coast to attend the Senate hearing on this proposition, and these two days were given to them that they might not have to return again after going home.

Mr. LYON. I can be heard at any time?

The CHAIRMAN. You can be heard at any time and you are not going to be foreclosed.

The committee will now stand adjourned until to-morrow.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Tuesday, March 26, 1918.

The committee met at 10.30 o'clock a. m., Hon. Thetus W. Sims (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Now, Mr. Spence, you may proceed in your own way and make your preliminary statement, and then when you are through the members of the committee will interrogate you; but during the time that Mr. Spence is making his opening statement I think it would be well that nobody interrupt him until he finishes. Proceed, Mr. Spence; give your name and your position.

STATEMENT OF LEWIS J. SPENCE, DIRECTOR OF TRAFFIC,
SOUTHERN PACIFIC LINES, NEW YORK CITY.

Mr. SPENCE. My name is Lewis J. Spence, and I am director of traffic for the Southern Pacific lines; residence, New York City.

The CHAIRMAN. Now, you say Southern Pacific lines,—that means the Southern Pacific system?

Mr. SPENCE. Yes. The views which I will express, however, are expressed on behalf of all the transcontinental lines.

THE STATUTE.

The first section of the act to regulate commerce requires that all rates shall be just and reasonable, and other sections of the act authorize the establishment of just and reasonable rates by the Interstate Commerce Commission. The law creates no standard for the ascertainment of what is a reasonable rate, and no standard has been established by the courts. Under the later decisions of the Supreme Court the judgment of the commission is final unless it can be shown that the rate prescribed is confiscatory. All other questions are left to the opinion of the commission. As a practical matter it could hardly be otherwise, since what is a reasonable rate involves a consideration of so many variable factors that it must in the last analysis be a matter of expert opinion, and the processes by which that opinion is reached can not be reduced to rigid rules. This refers to an individual rate, as distinguished from the whole body of rates, which may, of course, be tested by their relation to the return upon the value of the property. What, therefore, is a reasonable rate has been wisely intrusted to the determination of the commission, unhampered by anything more than the general standard of reasonableness which the term itself signifies. Since the commission was invested with this power in 1906 it has been freely exercised to such an extent that it may be fairly said that the rates now in effect throughout the country are, in large measure, either commission-made or commission-approved rates.

The third section of the act forbids any undue or unreasonable preference or advantage to any locality.

A rate which is just and reasonable may, nevertheless, be discriminatory. Therefore an individual rate or a scheme of rates to a given point may be either unreasonable or discriminatory or may be neither. The determination of both questions has been entrusted to the administrative discretion of the commission. Both as to the issue of reasonableness and the question of discrimination, the decisions of the Supreme Court have made the findings of the commission practically conclusive.

The fourth section of the act, as amended in 1910, prohibits the charge of any higher rates at intermediate points than at more distant points, except when expressly authorized by the Interstate Commerce Commission.

The commission has administered the fourth section in accordance with the standards created by the first and third sections, and has permitted departures from the rule prescribed by the fourth section only in those cases in which, in its opinion, the rate adjustment permitted thereby would not result either in unreasonable rates at the intermediate points or unjust discrimination against them in favor of the more distant points. Therefore the decision of the questions at issue in these cases has simply involved the application of the commission's expert opinion to the questions of reasonable and nondiscriminatory rates, upon which its opinion is practically final in all other cases. It would seem as a matter of principle that if the commission is to be vested with administrative discretion in the determination of what are reasonable and nondiscriminatory rates, that administrative discretion should also extend to those cases in which the same questions are presented under the guise of the long-

and-short-haul rule, as in other cases where the question of reasonable and nondiscriminatory rates is before the commission. As a question of legislative policy, it would seem that the issue before this committee is not whether the Interstate Commerce Commission has acted in an individual case in the manner in which the members of this committee would have acted, but whether or not it should have the discretion to decide the case at all.

In other words, it is not assumed that this committee expects to sit as an appellate tribunal and review the acts of the commission in specific cases. To the extent that the action of the commission should be examined with a view to determining whether it should in future be intrusted with the powers which it has hitherto exercised or whether those powers should be enlarged or contracted, it would seem that, as a matter of legislative policy, the committee's consideration should be confined to the principles which the commission has prescribed for its own guidance in the exercise of the discretion intrusted to it, and that the committee should not concern itself with the question as to whether the commission had or had not correctly applied principles which it has prescribed to a particular case arising in a particular locality.

I shall, therefore, deal with the principles which the commission has prescribed for its own guidance in the general administration of the fourth section of the law, and the propriety of continuing the discretion which is now vested in the commission; and it is believed that the mere statement of the principles which the commission has enunciated will demonstrate their own propriety and the wisdom of the discretionary power which is now delegated.

THE FOURTH SECTION AND ITS ADMINISTRATION.

Under the fourth section as enacted in 1887 and construed by the Supreme Court, the carriers freely exercised the privilege of making lower rates between more distant points than applicable at intermediate points whenever they were prepared to justify such rates by substantially dissimilar circumstances and conditions. The action of the carriers was then subject to review by the commission on formal complaint, in connection with which, however, the inquiry was necessarily limited to a determination of the sole question whether the conditions were or were not dissimilar; and in its practical operation the provision was of substantially no effect in governing the measure of the rates at intermediate points.

It was in the belief that this privilege had been too freely exercised by the carriers that the law was amended in 1910 by eliminating the words "under substantially similar circumstances and conditions," upon which the Supreme Court's construction of the law had been predicated. The result of this change was to prohibit the charge of any higher rates at intermediate points than at more distant points except when expressly authorized by the commission.

Recognizing that there were many instances in which the continuation of departures from an absolute long-and-short-haul rule should be permitted, the amendment of 1910 provided:

That no rates or charges lawfully existing at the time of the passage of this amendatory act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this act.

nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.

So that the continuance of lower rates previously established between more distant points than between intermediate points was protected by formal applications filed with the commission under this provision of the amendment.

It was predicted by some that the effect of this provision would so swamp the commission with such applications as to indefinitely perpetuate the existing conditions. These predictions have not been fulfilled. Prior to the amendment of 1910, the rate structure of the country was filled with lower rates at more distant important commercial centers than at intermediate points, due to the dissimilarity of circumstances and conditions. Although the applications were numerous and complicated, they were set down by the commission for hearing from time to time, and it may be fairly said that every important application has been disposed of by the commission. The remainder have either been adjusted to the orders of the commission or are in process of adjustment thereto.

Under the new order of things it will be observed that, as to each exception to the long-and-short-haul rule existing at the time of the passage of the act, the commission was called upon to decide, first, whether any relief at all was justified, and, second, whether the extent to which the carriers had departed from the prohibition of the statute was justified, and, if not, to what extent a departure should be permitted. The commission has, in many instances, found that the conditions did not justify the continuation of lower rates at the more distant points. In many other instances it found that the conditions did justify the continuation of lower rates at more distant points than at intermediate points, but required as a condition thereof a reduction of rates at intermediate points, which reduced the difference which the carriers had previously maintained between the rates at intermediate points and at the more distant points. In a few instances the commission held that the adjustment theretofore existing might properly continue in all respects. While time has not permitted a compilation of the commission's orders and the changes of adjustment made thereby, it is certain that such a compilation, if made, would support the foregoing statements, which, indeed, it is believed will not be denied by anyone who is familiar with what has been done by the commission.

In passing upon these applications the commission has considered the following questions:

First, whether the measure of the rate at the more distant point was created by conditions beyond the control of the applicant carrier. Of such conditions the chief, but not by any means the only illustration, was, of course, competition of carriers by water.

Second, whether the rate thus created by conditions beyond the control of the applicant carrier was a subnormal rate; that is to say, a rate lower than a reasonable rate for the service performed, as judged by ordinary standards. Those standards, it must be remembered, are the standards of the commission—not the standards of the carrier.

Third, Whether the rate created by conditions beyond the control of the applicant carrier and less than normal, as measured by the

usual standards of the commission, was nevertheless one that paid something more than the out-of-pocket cost—that is to say, the bare cost of handling such freight as additional traffic—and therefore contributed something toward those expenses of the carrier which are constant and are not increased by taking such freight as additional traffic, and may contribute something to the return on the investment, thereby reducing instead of increasing the burden upon other traffic.

Fourth. Whether the rates at intermediate points were reasonable, and, in relation to rates at more distant points, were not unduly discriminatory.

Only where these four questions have all been answered in the affirmative has the commission granted the application of the carriers. When all but the fourth question have been answered in the affirmative relief granted has been conditioned upon the maintenance of such rates at intermediate points as prescribed by the commission. Therefore, under the requirements exacted by the Interstate Commerce Commission in its administration of the 1910 amendment of the fourth section of the law, a new order of things has been created, a new adjustment of rates has resulted, and marked progress has been made. Under the conditions imposed by the commission it will be observed that the carriers are not permitted to make lower rates at the more distant points than at intermediate points, unless the commission is convinced, first, that the higher rate at the intermediate point is, in itself, just and reasonable, and, second, that under all of the circumstances of the case no undue discrimination results and no undue burden or hardship is imposed upon the intermediate community or upon other traffic. These questions, under the general scheme of regulation embodied in the interstate-commerce act, are primarily within the administrative jurisdiction of the commission and practically beyond the review of the courts.

To achieve these results in all rates is the prime purpose of the interstate-commerce act. Anyone who seeks for himself or for his community any better basis of rates than one so made is asking for himself or for his community a special privilege denied to the country at large in the adjustment of rates. It would also seem that if the commission can be intrusted to administer the law in consonance with these principles in connection with the rate structure of the country generally, it can be intrusted to administer this section of the law in consonance with these principles. If it is not capable of doing the latter, it is not capable of doing the former. Those who contend that the commission should be deprived of its administrative discretion in connection with this class of rates, and that there should be substituted therefor an inflexible long-and-short-haul rule must base their argument either upon the ground that the commission can not be intrusted to administer the law fairly and in such a way as to subserve the best interest of the country at large, or upon the ground that the making of a lower charge for the service at the more distant point, in any case, is so manifestly unjust that it should never be permitted. Either contention is an indictment of the commission's judgment and fairness, inasmuch as the commission has recognized that there are many cases in which it is to the interest of the country at large as well as to the interest of the carriers, that

relief from an inflexible rule should be accorded under the law as administered by the commission. Those who advocate a rigid long-and-short-haul rule are in the position of saying that no lower rate should be charged at a more distant than at an intermediate point under any circumstances, even though the rate at the intermediate point may, in itself, be just and reasonable, and even though no undue hardship or burden may be imposed upon other traffic or upon the intermediate point by the recognition that conditions justify a lower rate at the more distant point. To assert this proposition is to answer it.

The whole argument that it is conclusively unjust to permit a lower charge at the more distant point is based upon the assumption that any rate which the carrier can afford to make at the more distant point for a greater service must be reasonable for a lesser service at the intermediate point. Such an argument fails to distinguish between reasonable rates and rates which, although much lower than reasonable, pay something in excess of what has been termed by the commission "the out-of-pocket cost," that is to say, the bare cost of handling such freight as additional traffic. All students of rates are familiar with the fact that rates are not and can not be so adjusted that each rate will pay the haulage cost and contribute ratably its proportion of all overhead and constant expenses and return on investment. As frequently pointed out, the results of such a rule would be that many commodities could not be moved at all, or, if moved, could be carried but short distances, because they could not bear the exaction of such a rate, with the result that competition in markets between producers as well as between transportation agencies would be curtailed and the commerce of the country would be seriously circumscribed. The whole classification of freights is built up upon the basis that, while no traffic should be carried at a loss, some traffic must be carried at a rate which will contribute less proportionately to the constant expenses and obligations of the carriers than other traffic contributes. That this is not only just and reasonable but necessary to the stimulation of industry, as well as of traffic, is recognized by every one familiar with the transportation problem. There are, therefore, many rates which, although much lower than reasonable, nevertheless, pay something more than the out-of-pocket cost. Every such rate, whether made to meet water competition or to meet market competition, or whether made independently of competition for the purpose of extending the market of any article over the widest possible area and of putting it within the reach of the greatest number of people, not only involves no loss to the carrier and casts no burden upon other traffic but, if made for the purpose of attracting to the carrier in question business which would not otherwise move, relieves other traffic of a portion of the burden it must otherwise bear.

A case in which permission is sought to charge less for the longer haul than for an intermediate shorter haul is merely a species of the general class of cases above described. Where there is no element of long and short haul involved, no one would contend that any rate of the class above described would shed any light whatsoever upon the question as to what would be a fully remunerative rate for any distance. Neither can it be contended that a rate made for the

longer service to the more distant point, which, although less than reasonable, pays something more than the out-of-pocket cost, is, in itself, any measure of a reasonable rate for any lesser intermediate distance.

The error of those demanding a change in the law, therefore, lies, first, in assuming that any rate which is in excess of the out-of-pocket cost for the longer haul must be fully remunerative for the shorter haul, and, second, in the assumption that to the extent that the long-haul rate is less than reasonable, a higher rate is imposed at intermediate points than would otherwise be charged. The reverse of both propositions is true. Considered solely with regard to the interests of the carrier, on the one hand, and the intermediate point, on the other, it is obvious that the railroad should not only have the right to take this additional business if it can make something more than the out-of-pocket cost out of it but that it is to the interest of the intermediate point that it should be permitted to do so and thereby lessen the burden which would otherwise be imposed upon other traffic. In this connection attention is called to the following quotations from "Noyes on American Railroad Rates." On page 94 he states:

The statement that low rates at competitive points impose heavier burdens upon local traffic is fallacious. The railroad could not get the through traffic at all unless it made low rates. Unless carried at an actual loss—impossible from an economic standpoint—it does the local traffic no harm. If it pay any profit—although insufficient to contribute to fixed charges—it reduces the amount necessary to be raised from local shipments. Low rates at competitive points, by producing paying business not otherwise obtainable, in the end benefits the local traffic by enabling the railroad to reduce the rates thereon. Moreover, a reduction of through rates to a competitive point generally benefits the surrounding territory. The low through rate to the distributing center plus the local rate to the near-by station is often less than the regular rate to that station even though it be nearer the shipping point than the distributing center.

On page 112 he continues:

A statute absolutely denying to a railroad the right to charge less for the longer haul, while seeming just at first glance, would contravene those elementary principles which we have considered. Charges could no longer be based upon the value of the service. A railroad must take business from competitive points at competitive rates, and if it can not charge intermediate traffic proportionately more it must often go into bankruptcy. And if it must subsist upon the local traffic alone, the same result is likely to follow. Instead of the railroad losing money on long hauls and making it up on the short, whatever is received from through traffic above the additional expense of earning it is extra and goes that far toward maintaining the railroad. Inequalities in charges in favor of the long haul manifestly constitute discriminations between localities, but they are not unjust unless the differences in charges fail to correspond to the differences in conditions.

The views to which we have given expression are not simply the views of the carriers and of economists but are also entertained by the Interstate Commerce Commission, as indicated by its opinions.

It is obvious that the present law is productive of competition among carriers, while the withdrawal of the commission's discretion to permit such competition would tend toward monopoly in transportation. That it is the expert judgment of the commission that such competition should be permitted whenever, in the opinion of the commission, it can be permitted without casting any undue burden upon other traffic, is shown by its decisions hereafter referred to.

While clearly manifesting the intention to deprive the carriers of any discretion, Congress evidently recognized in the delegation of authority to the commission the importance of a sufficiently flexible long-and-short-haul provision to not only enable the carriers to participate in all business from which they might derive revenue in excess of the cost of transportation, but to promote a healthy competition between the rail carriers, between the rail and water carriers, and between the producing markets of the country, and the law has been so administered by the Interstate Commerce Commission. These results find their accomplishment in various forms.

First. By permitting rail lines to meet the competition of water lines as subsequently illustrated.

Second. By permitting a longer line to make rates between important terminals to meet the rates of a shorter line without disturbing its rates at intermediate points, provided that the rates at intermediate points on the longer line are found to be not more than reasonable in and of themselves; that is to say, a rate between two points which is reasonable by a short line may be less than reasonable by the longer line in view of the service performed, and if the commission is not empowered to authorize the longer line to meet the rates of the shorter line without reducing its intermediate rates, the longer line is compelled to retire from the business between the more distant points. This would be subversive of public policy in that it would restrict competition of carriers instead of promoting it. The intermediate communities on the longer line would not be benefited by the inability of that line to compete for the business between the more distant points, nor would the interests of those communities be prejudiced, on the other hand, by permitting the longer line to compete with the shorter line for the business between the more distant points.

Third. By permitting a carrier serving one producing point to make rates to a common consuming market in competition with another carrier serving another producing point where the line of the first-named carrier is under some disability as compared with its competitor, as, for instance, where the first-named carrier serving the one point of production is a rail line and the second-named carrier serving the other point of production is a water carrier, or where, although the carriage from both points of production is by rail, the distance from the first-named point of production by the first carrier is so much longer than the distance from the second-named point of production by the second carrier that the first carrier would be unable to make a rate which would permit the producer on its line to meet the competition of the producer on the second line if it were required to maintain that rate at all intermediate points. Under an inflexible long-and-short-haul provision the public would be deprived of the incalculable benefit of this competition of producing markets. For example, the discretion now delegated to the Interstate Commerce Commission has been exercised upon application of the interested carriers by authorizing such rates, as follows:

From 15 producing points in Utah and Idaho to Chicago a rate on sugar, carloads, minimum weight 80,000 pounds, of 43 cents per 100 pounds, compared with the lowest rates in effect to Missouri River points, being intermediate points of destination, of 50 cents per 100

pounds, carloads, minimum weight 60,000 pounds, and 55 cents per 100 pounds, carloads, minimum weight 36,000 pounds. The rate to Chicago is published under authority of Interstate Commerce Commission's fourth section order 4604 of February 13, 1915.

[For reference.]

RATES MADE TO MEET MARKET COMPETITION UNDER WAIVER OF FOURTH SECTION.

Sugar: California, Utah, and Idaho factories to Chicago, St. Louis, and other points named below to enable western sugar to be sold in competition with sugar produced in New York and New Orleans. Rate situation as follows:

To—	From California.	From Utah and Idaho.	Carload, minimum weight.
			<i>Pounds.</i>
Omaha, Nebr.....	55	50	60,000
Kansas City, Mo.....	55	50	60,000
Ottumwa, Iowa.....	54	49	80,000
Clinton, Iowa.....	51	46	80,000
Rock Island, Ill.....	51	46	80,000
Chicago, Ill.....	48	43	80,000
St. Louis, Mo.....	48	43	80,000

Rates named from California contained in Transcontinental Freight Bureau eastbound tariff 3-M, R. H. Countess' I. C. C. No. 1038.

Rates named from Utah and Idaho to Omaha and Kansas City contained in Western Trunk Line Tariff 103, E. B. Boyd's I. C. C. No. 697.

Rates named from Utah and Idaho to all points except Omaha and Kansas City contained in Western Trunk Line Tariff 104, E. B. Boyd's I. C. C. No. A-721.

The effect of this authority is to enable the Utah and Idaho producers to market their products in Chicago in competition with refiners at New Orleans and the Atlantic Seaboard. Of what benefit would it be to the people on the Missouri River, or to anyone else, to have an inflexible prohibition which would deprive the Utah and Idaho refiners of participation in the Chicago market, and deprive Chicago of the benefit of all of the producing markets which are enjoyed by Missouri River points? The only effect would be to give the New Orleans and Atlantic Seaboard refiners a monopoly of the Chicago market and to circumscribe the markets of the Utah and Idaho producers.

From Saltair, Utah, near Salt Lake City, to Portland, Oreg., a rate on salt, in carloads, of 35 cents per 100 pounds is made to enable Utah salt to be marketed in Portland in competition with salt produced on San Francisco Bay and shipped by water, while rates at intermediate points are as high as 45 cents per 100 pounds. It is no hardship upon intermediate destinations that shippers at Saltair, Utah, should be thus permitted to market their product in Portland or that Portland should enjoy the benefit of competing sources of supply, but this would be prohibited by withdrawal of the discretionary authority now delegated to the commission to grant relief from the provisions of the fourth section.

Salt, Cl. Saltair, Utah, to Portland, Oreg., via. O-W. R. R. & N. Co. and O. S. L. R. R. Co., 35 cents per 100 pounds, to enable Utah salt to be sold at Portland in competition with salt produced on San Francisco Bay and transported to Portland by water at rate of 10 cents per 100 pounds. Maximum rates intermediate points 45 cents.

Distance: Saltair to Portland, 904 miles.

Rate is named in O. S. L. R. R. Co. tariff 2118-E, I. C. C. No. 2003.

From the foregoing, it must be obvious that the effect of an inflexible long and short haul provision in the statute would be destructive of competition between the carriers and between the producers of the country.

Although the merits of the transcontinental controversy are not before this committee, the representatives of the intermountain country have approached the discussion of the fourth section as though this committee were an appellate tribunal to determine the merits of the issues involved in the transcontinental rate adjustment, and in justice to the committee, the conditions which existed prior to 1910, and the changes which have resulted from the exercise of the discretionary authority delegated to the commission by the amended statute, should be briefly but clearly stated.

Pacific coast cities enjoy the benefit of sea transportation to and from the Atlantic seaboard for many years before the completion of the first transcontinental railroad. As early as 1848 sailing vessels were operated with reasonable frequency between Atlantic and Pacific ports via Cape Horn, and this service was supplemented as early as 1855, upon the completion of the Panama Railroad, by through service composed of steamships between Atlantic ports and Colon and between the city of Panama and Pacific ports in connection with the Panama Railroad across the Isthmus. The growth of Pacific coast cities began and their development continued under these conditions, while it was not until 1869 that, upon completion of the Union Pacific-Central Pacific route, rail communication was had between the Atlantic seaboard and the Pacific coast. Even the material for the construction of the Central Pacific line eastward to the vicinity of Ogden had been transported by sea.

Arizona did not become an intermediate territory until the early eighties, upon completion of the Southern Pacific line eastward to a connection with the Santa Fe at Deming in 1881 and to a connection with the Texas & Pacific at El Paso in 1882.

Salt Lake City did not become an intermediate point until the completion of the Denver & Rio Grande to a connection with the Central Pacific at Ogden in 1883.

Spokane did not become an intermediate point until connection of the Northern Pacific with the Oregon Railroad & Navigation Co. at Wallula Junction, Wash., in 1883.

From this it will be seen that the development of Pacific coast cities has been the logical result of their geographical location and their accessibility to sea transportation. Their advantage was a birth-right which they would have continued to enjoy if transcontinental railroads had never been constructed.

For 20 years prior to the completion of the first transcontinental railroad and for more than 45 years thereafter there was uninterrupted ocean service. The sailing vessels via Cape Horn were superseded on October 15, 1900, by the inauguration of a steamship service between New York and Pacific ports by the American-Hawaiian Steamship Line through the Straits of Magellan under the ownership of experienced men who had been operating the so-called clipper ships via Cape Horn. By this service the time which had been consumed by sailing vessels of 120 days between New York and San Francisco was reduced to about 50 or 60 days. Upon completion of

the Tehuantepec Railroad across the Isthmus of Mexico the American-Hawaiian Steamship Line, with an increased fleet, inaugurated what was known as the "Tehuantepec route," consisting of regular steamship service between New York and the eastern terminal of the Tehuantepec Railroad and between its western terminal and San Francisco. This service reduced the time to 35 or 30 days, and was in addition to the service via the Isthmus of Panama, which had continued without interruption since completion of the Panama Railroad.

It will be observed that, in spite of the construction of several transcontinental lines, there was a continuous expansion in the facilities of water transportation, and an improvement in the service; so that for nearly half a century the transcontinental lines encountered sea competition in a progressive degree.

It was under these conditions that, prior to the 1910 amendment of the fourth section, the transcontinental lines freely exercised the privilege of making such rates as they considered necessary to meet water competition without any relation to intermediate rates so long as they were prepared to show the existence of dissimilar circumstances and conditions. All traffic was regarded as subject to sea competition, and both class and commodity rates, with few exceptions, were higher to the intermediate territory than to the coast cities. The degree of sea competition, of course, varied according to the commodity. A great many were actually carried in large quantities by vessel, others in lesser quantities, while the competition for others was largely, if not entirely, potential.

Upon the applications filed by the carriers immediately after the amendment of 1910, which were merged with pending complaints of intermountain communities, the commission's decision was handed down on June 22, 1911, about one year after the passage of the amended statute; and, in view of the fact that the statute granted six months for the filing of applications, no just criticism can be made of the time within which the case was decided, considering the importance of the issues involved.

The commission held that transcontinental traffic was in fact subject to sea competition to such an extent as to warrant relief, but that the differences between the coast and intermediate rates were too great, and ordered that rates from the Missouri River to the interior should not exceed rates from the Missouri River to the coast, and that rates from the Mississippi River, Pittsburgh territory, and Atlantic seaboard territory, to the interior, should not exceed the rates to the coast by more than 7 per cent, 15 per cent, and 25 per cent, respectively.

The carriers brought suit to enjoin the enforcement of the commission's order, claiming—

First, that the statute was unconstitutional in that it provided no standard to be followed by the commission and was hence a delegation of legislative authority; and

Second, that if, as asserted by the commission in its opinion, the law was to be administered in accordance with the standards created by the first and third sections, the commission's jurisdiction ended with the determination of the fact whether or not there was a state of facts at the coast justifying a departure from the fourth section,

and that if the commission found such to be the fact it had no authority to prescribe a relationship between the rates to the coast and to the intermediate points.

The case was argued before the Supreme Court in October, 1912, and was subsequently set down by the court for reargument, and finally decided by the court on June 22, 1914. The court held that the statute was constitutional and that under it the commission did have the authority to prescribe a relation between the rates to the coast and to the intermediate points and affirmed the orders of the commission, the enforcement of which had been enjoined by the Commerce Court.

In the meantime, the class rates were realigned and graded so that they were in all cases lower to intermountain destinations than to the Pacific coast instead of higher as they had previously been. These class rates apply to all of the 13,634 items embraced in the western classification upon which commodity rates have not been provided.

By other revisions in rates which were made while the case was in the Supreme Court and immediately following its decision, the carriers greatly reduced the number of commodity items upon which rates to the coast cities were lower than to intermediate points, so that by these successive revisions the number of commodity items upon which the rates to the coast were lower than to intermediate points was reduced from 1,705 to 449.

The decision of the Supreme Court was almost coincident with the opening of the Panama Canal, through which steamship service was inaugurated in August, 1914, consisting of six steamship lines with fleets aggregating 49 steamers, with a total capacity of 1,000,000 tons per annum in each direction. The time between New York and California ports was reduced to about 22 days, and the sea rates which had before prevailed were substantially reduced. Many rates were reduced more than one-third, and the producing territory in the East from which the ocean lines drew their traffic extended far into the interior. Before the order of the commission, affirmed by the Supreme Court as above noted, could become effective, it became evident to the carriers that they would not be able to hold any considerable portion of the traffic from Atlantic seaboard territory as against the ocean lines at the rates then in effect. They also contended that they could not afford to apply the percentages contained in the commission's order to the reduced rates which they would be required to make to meet the canal competition, and that if they were required so to reduce the interior rates as a condition precedent to the making of rates to the coast they would have to retire from the business between the seaboards upon a specified list of articles moving heavily by sea.

They thereupon requested the commission to postpone the effective date of the percentage order as to certain specified articles moving in large volume by sea until the commission could pass upon a new application covering these articles, which application was based upon the newly created competition growing out of the Panama Canal. This request was granted. As to such articles, new application was filed which was set down promptly for hearing at Chicago in October, 1914. Upon all other articles the percentage order of the commission became effective.

The commodities covered by the new application became known as schedule C commodities, as the carriers had divided their rates into three subdivisions—schedule A, embracing those upon which the rates to the coast were no lower than to intermediate points; schedule B, those upon which the commission's percentage order was applied; and schedule C, those covered by the new application.

The decision in schedule C case was made January 29, 1915. The facts found by the commission fully sustained the contention of the carriers that the opening of the canal had so increased the sea competition that they were unable to compete further for coast-to-coast traffic without making substantial reductions in their rates. The remaining question was whether, as a condition precedent to meeting the increased competition of the sea, the carriers should be required to apply the percentages fixed in the commission's order to the reduced rates made to meet the canal competition. The final order of the commission was to permit the making of the rates sought provided that where the terminal rate was 75 cents or more it should apply as maximum to the intermediate country from the Missouri River, to which differentials of 15, 25, and 35 cents should be added from Chicago, Pittsburgh, and seaboard territories, respectively; and where terminal rate was less than 75 cents, no rate higher than 75 cents should be made from the Missouri River to the intermediate territory, with the application of the differentials above stated from eastern territories. The effect of this order was to reduce the rates to the intermountain country below those which would have resulted from the application of the percentage order to the rates in effect at the time percentage order was made, but not to make rates as low as would have resulted from the application of the percentage order to the reduced rates to the Pacific coast.

In the meantime, in another proceeding the commission passed upon the Pacific coast cities to which the so-called terminal rates to meet sea competition should be applied, and, whereas, the carriers had for many years applied such rates to 263 cities in California, Oregon, and Washington, the commission required, after a comprehensive investigation, that they be confined to the deep-sea ports, and specified the ports to which they should thereafter be applied, which are, principally, San Francisco, Oakland, San Diego, San Pedro, Portland, Tacoma, and Seattle.

From the foregoing it will be observed that after the delegation of authority to the commission to prescribe from time to time the extent to which a carrier might be relieved from the operation of the fourth section, the practice of making lower transcontinental rates to meet sea competition was very greatly circumscribed.

On September 18, 1915, the Panama Canal was closed by landslides and was not reopened until April 15, 1916. By reason of the resulting diminution of ocean competition, the Spokane Merchants Association and the Nevada Railroad Commission petitioned the commission for a reopening of the transcontinental fourth section case. These petitions were filed in the spring of 1916, and were decided by the commission on June 5, 1916 (40 I. C. C., 35). An order was entered canceling the special authority given upon schedule C commodities, the result of which was to throw the adjustment upon those commodities back to the percentage order originally made, and then effective upon all except schedule C traffic. Carriers

filed tariffs advancing the rates to the terminal cities. These tariffs upon the protest of shippers were suspended, and about the same time the Spokane Merchants' Association filed a petition asking for the withdrawal of all fourth section relief including that covered by the percentage order, upon which petition the entire matter was reopened. In the meantime, for the advanced rates which had been suspended, the carriers substituted, on schedule C commodities, rates which were 10 cents per 100 pounds higher upon carloads and 20 cents per 100 pounds higher upon less than carloads than the rates authorized by the schedule C decision. These rates were suggested by the carriers, not as reasonable rates, but as an advance in rates due to the diminished effect of sea competition, but were asserted by them to be fully justified by the spasmodic actual competition still being encountered and the potential competition presented by the announced intention of the ocean carriers, which had been hitherto engaged in the service, to resume, at least as soon as the conclusion of the war.

Decision upon the reopened case was rendered by the commission on June 30, 1917, under the terms of which the carriers were directed to remove all violations of the fourth section on or before October 15. This decision, while dated June 30, was not released from the Government Printing Office and served upon the parties until July 24. Before tariffs could be prepared and filed making the changes in rates necessary to conform to the order, the amendment of the fifteenth section of the act requiring the approval of the commission in advance of the filing of increased rates had become effective. Therefore an application to advance the terminal rates to the level of the intermediate rates already in effect was promptly made by the carriers, and testimony in support thereof was taken at New York, Chicago, and Portland, Oreg. The result has been to establish rates upon all classes and commodities to the Pacific coast in no instance lower and in many instances higher than the rates to or from intermediate points.

The complaint of the representatives of the intermountain country who have appeared before this committee seems to be directed against the manner in which the commission has administered the fourth section of the law rather than against the provision of the law itself, but inasmuch as the records clearly show, first, that extended litigation was encountered which delayed the effectiveness of the commission's first orders for a period of about four years, after which the most unusual and varying degrees of sea competition were created by the opening of the Panama Canal, its temporary interruption by slides, its reopening, and its subsequent paralysis resulting from the unparalleled demand for ships in other service, and, second, that the commission would not have been justified under normal conditions in making the order which has now been made under such abnormal conditions of sea competition as have not existed for half a century and are never likely to exist again after the conclusion of the war, the charge or insinuation that the commission has procrastinated in the exercise of its authority and that the order which was finally entered, to require the transcontinental lines to cancel all exceptions to the long-and-short-haul provision, might have been properly made a long time ago, is an unwarranted reflection upon the integrity, the diligence, or the intelligence of the Interstate Commerce Commission.

REASONABLE RATES.

I will now take up the subject of reasonable rates.

Primarily, it is just and reasonable rates to which every community is entitled. During the course of the transcontinental controversy the commission has taken several thousand pages of oral testimony and has received many hundreds of carefully prepared exhibits bearing upon the different phases of the situation. Manifestly, this committee can not undertake to develop all the facts upon which the commission has acted, or all the merits of the controversy as they seem to appear on either side thereof, but in view of the manner in which the question has been presented by the representatives of the intermountain country it becomes necessary to go into a few of the fundamental questions affecting the particular case which they present. It can not be assumed that the intermountain people consider that they are entitled to any better adjustment of rates than that prescribed for the country as a whole, namely, a reasonable and nondiscriminatory basis of charges, nor is it to be assumed, if they do consider that they are entitled to something more, that Congress will concur in that opinion. It therefore becomes appropriate to first inquire what rates are in effect to the intermountain country, how they compare with rates fixed by the commission to points farther east, and whether by such comparison they are just and reasonable.

The class rates from all points on and east of the Missouri River to the Spokane territory, Salt Lake City, and the States of Nevada and Arizona have been fixed by the Interstate Commerce Commission. Upon all traffic moving at class rates, therefore, the intermountain country to-day pays rates which have been established by governmental authority as reasonable and just. In fact, the commission has fixed the rates now applicable for practically every important intermediate stage of the haul across the continent on class traffic. In other words, it has itself fixed or approved the class rates from New York and other eastern points to Chicago and the Mississippi River, and for all intermediate hauls within the eastern half of the United States. It has likewise fixed the class rates from Chicago and the Mississippi River to the States of Kansas, Colorado, Utah, Texas, and New Mexico, and has prescribed the basis for the construction of class rates from eastern defined territories to the Missouri River. The rates so fixed are graduated according to distance. The class-rate structure may fairly be regarded as the normal basis of rates. In these series of cases, therefore, as related to the intermountain country, the commission has done two things of almost equal importance. First, it has prescribed the normal reasonable rates from all eastern points to the intermountain country, and, second, it has established the normal relationship between rates to the intermountain country and rates for successively shorter intermediate services clear back to the Atlantic seaboard. It should be said in passing that the class rates to Pacific coast terminals are a continuation of the grade above described and are higher than the class rates to Nevada, Utah, Arizona, Spokane, and all other intermediate points. Formerly this was not so, but it has been so since the amendment to the fourth section in 1910.

The commission has not established any commodity rates to Arizona, Nevada, or Spokane as rates just and reasonable per se. Its numerous orders in transcontinental fourth section cases, however, establishing a relation between the rates to Pacific coast terminals and the maximum rates which might be charged at intermediate points as a condition precedent to relief at the terminal points, has had the result of establishing a long list of commodity rates to the intermediate points which, it is the contention of the carriers, are not only reasonably low but are below the level of any rates which would have been prescribed as reasonable per se. The commission has, however, approved as reasonable the commodity rates established by the carriers to Salt Lake City, I. & S. Docket 411 (32 I. C. C., 551). Even the rates thus approved by the commission as reasonable per se to Salt Lake City have been reduced by the application of the maximum-rate orders made in connection with the fourth-section proceedings.

The commission has already prescribed as reasonable per se, upon the complaint of the Railroad Commission of New Mexico, commodity rates applying to that State. (State Corporation Commission of New Mexico *v.* A., T. & S. F. Ry., 34 I. C. C., 292.) The commission has not only declared what are reasonable commodity rates to Colorado, Utah, and New Mexico but it has fixed or approved the commodity rates in effect clear across the continent from the Atlantic seaboard to the very doors of the intermountain country and for the intermediate hauls between. By this it is not meant that the commission has passed upon the reasonableness of every specific rate for every haul within the territory described. It has, however, in a series of cases, each applying to a large section of the country, and each tested after the most exhaustive examination, passed generally, and in many instances specifically, upon the commodity rates from eastern defined territories to the Middle and Far West. In the Five Per Cent Case (31 I. C. C., 351), and, again, the Fifteen Per Cent Case (45 I. C. C.), the commission passed upon the general level of the rates applying between New York and Chicago and the Mississippi River and for intermediate hauls within the territory described. In other cases, too numerous to mention, it has passed specifically upon the rates upon specific commodities within the territory named. The rate structure within the eastern half of the United States, therefore, has been either made or approved by the commission.

Proceeding westward on the central route to the Pacific coast, the commission specifically established commodity rates from Chicago and the Mississippi River to Kansas, and from Chicago, the Mississippi and Missouri Rivers, respectively, to Colorado and Utah, including Salt Lake City, and up to the very border of Nevada. (State of Kansas *v.* A., T. & S. F. Ry., 27 I. C. C., 673; Colorado Manufacturers' Association, 29 I. C. C., 544; I. & S. Docket 411, *supra*.) Indeed, the reasonableness of the commodity rates to Salt Lake City has been before the commission twice. In Commercial Club of Salt Lake City *v.* A., T. & S. F. Ry. (19 I. C. C., 218), decided June 7, 1910, the commission prescribed as reasonable rates on commodities from Chicago, the Mississippi and Missouri Rivers to Salt Lake City. The carriers a few years later sought to obtain

an advance in the rates so fixed by the commission. The advances sought were suspended and became the subject of a further exhaustive hearing by the commission, finally submitted to that body on November 5, 1914, or shortly after the opening of the Panama Canal, and before the final submission of the applications for the relief from the long-and-short-haul clause in connection with transcontinental traffic, which were made by the transcontinental carriers as a result of canal competition. These two cases, the one involving the reasonableness per se of the rates to Utah and the other the question of fourth-section relief on transcontinental traffic, were concurrently before the commission and decided at almost the same time, the Salt Lake City case being decided January 19, 1915, and the application of the transcontinental carriers on January 29 of the same year. In the case involving the proposed advances to Salt Lake City, which had been suspended, the commission found that the advances had been justified and vacated the order of suspension. Concurrently, therefore, with the decision of the transcontinental case, we have a decision passing upon the reasonableness of the rates to Salt Lake City. In this connection it is appropriate to say at this point that notwithstanding the decision of the commission in the Salt Lake case, holding that the proposed advances to Salt Lake City had been justified, the effect of the decision made a few days later, by which relief on Pacific coast traffic was conditioned upon the maintenance of certain rates at interior points, was to reduce a number of rates to Salt Lake City which had been found to be reasonable.

By way of the southern route the commission has fixed or approved as reasonable commodity rates from eastern defined territories as far east as Pittsburgh and Buffalo to points in the States of Texas and New Mexico. (*Railroad Commission of Texas v. A., T. & S. F. Ry.*, 20 I. C. C. 463; *Corporation Commission of New Mexico v. A., T. & S. F. Ry.*, 34 I. C. C. 292.) As in the case of the Salt Lake rates, the New Mexico case was pending before the commission at the time of the opening of the Panama Canal, and while the fourth section applications of the carriers based upon the ocean competition through the canal were being considered by the commission. In fact, the New Mexico case was submitted prior to the opening of the canal, to wit, on April 11, 1914, but was not decided until after the fourth section applications of the transcontinental carriers had been decided.

It therefore appears that when fourth section applications of the carriers growing out of canal competition were granted by the commission it had itself fixed or approved a normal basis of class rates applying step by step for the transportation of commodities from the Atlantic seaboard to and including the intermountain country, and had likewise reviewed the reasonableness of the commodity rates applying from the Atlantic seaboard and intermediate points of origin westward to and including the intermountain States of New Mexico and Utah and up to the borders of Nevada and Arizona.

Nor is that all. Of all the commodities subject to water competition between the Atlantic and Pacific coasts, iron and steel articles are the most important. Statistics submitted to the commission in the various transcontinental cases show the tonnage of iron and steel articles carried by the ocean lines to have been of large volume. These

articles are not only an important part of transcontinental traffic but constitute one of the chief subdivisions of traffic in all sections of the country. The importance of this traffic and the acute competition between different jobbing centers in the Middle and Far West in the distribution of such articles resulted in a large number of complaints before the Interstate Commerce Commission involving the reasonableness of the rates on iron and steel from Pittsburgh, Chicago, and other producing points in the East and Middle West to destinations west of the Mississippi River, all of which were consolidated under the name of the Iron and Steel cases and were submitted to the commission shortly after it made its decision in the schedule C case and long before its subsequent and more recent reconsideration of the transcontinental situation. (36 I. C. C., 86.) The cases so consolidated included so much of the Salt Lake case as involved the suspended increases on iron and steel articles, and in addition to that case included so much of the Colorado case already noted as related to iron and steel articles, and included in addition 10 other cases. The scope of the case is thus described by Commissioner Harlan (36 I. C. C., 87):

This group of cases involves substantially all the rates on iron and steel articles from Central Freight Association, Mississippi River, Missouri River, Chicago, and territory intermediate to Chicago and the Missouri River, on the one hand, to points in Utah, Colorado, Arkansas, Kansas, and Oklahoma on the other hand.

As a result of this case, the commission has established reasonable rates from Pittsburgh, Chicago, and other producing points to destinations in the States named. By this decision, therefore, it has fixed rates on these articles via the central route to and through Kansas and Colorado to the complaining intermountain community of Salt Lake City and to other points in the State of Utah and up to the border of the State of Nevada; while via the southern route it has fixed the rates from eastern producing points to destinations in the States of Arkansas and Oklahoma, or up to the border of the State of Texas, to which State, as well as to New Mexico, the commission had in other cases fixed or approved the rates on these articles. If any confidence whatever is to be reposed in the decisions of the commission, it must be admitted that, considered solely as reasonable rates, the existing rates to Utah and New Mexico upon iron and steel articles and upon all other commodities are no higher than just and reasonable. If any confidence is to be reposed in the decisions of the commission, it must likewise be concluded that the class rates to Nevada, Spokane, and Arizona are likewise just and reasonable. If any confidence is to be reposed in the decisions of the commission, it must likewise be concluded that the relation to be found between the class rates from eastern defined territories to Arizona, Nevada, and Spokane, on the one hand, and Utah, Colorado, and other points farther east, to which class rates have likewise been established by the commission, on the other hand, represents a just and reasonable relation between charges to be made upon like kinds of traffic passing through such points farther east to the intermountain countries farther west. So believing, the carriers, in connection with the hearings of last year upon the petition of the intermountain States for the withdrawal of all authority to charge lower rates to Pacific coast

terminals than to intermediate points, prepared exhaustive exhibits to meet the contention that the rates to the intermountain points were higher than normal reasonable rates should be. These exhibits covered approximately 200 commodities, contrasting the present rates to Spokane, Reno, and Phoenix with what were called projected rates to these points. The method of making the comparison is described by the commission in its decision on transcontinental rates of June 30, 1917 (46 I. C. C., 236, 247-248) :

The carriers have computed the projected commodity rates to Reno, Phoenix, and Spokane in two ways: First, they have taken the commodity rates to Salt Lake City, approved by us in class and commodity rates to Salt Lake City, supra, and computed from them commodity rates to Reno, Phoenix, and Spokane, which bear the same proportion to the commodity rates to Salt Lake City that the class rates to the three cities named bear to the Salt Lake City class rates; and, second, computation has been made using the commodity rates to Denver as a base and computing the commodity rates to Reno, Phoenix, and Spokane by multiplying the Denver rates by the percentage which the class rates to Reno, Phoenix, and Spokane bear to the class rates to Denver. The results may be illustrated as follows: The class rates from Chicago to Reno, Spokane, and Phoenix are approximately 116½ per cent of the class rates from Chicago to Salt Lake City and 184 per cent of the class rates from Chicago to Denver. The commodity rate on structural iron or steel from Chicago to Salt Lake City is 82 cents; to Denver, 57½ cents. Of 82 cents, 116½ per cent is 95 cents, and 184 per cent of 57½ cents is \$1.00, while the maximum rate authorized by Fourth Section Order No. 124 to these three cities is 90 cents.

This is not the place to try out the reasonableness of rates to the intermountain section or to any other section of the country, but it is respectfully suggested that if the method of computation adopted does not afford a fair measure of the reasonableness of the rates to Phoenix, Spokane, and Reno, as compared with rates fixed by the commission to points farther east, then no credence at all should be given either to the measure or relationship of rates as established by the Interstate Commerce Commission. Of these exhibits the commission in its decision says (46 I. C. C., 236, 248) :

Examination of the rates on the approximately 200 commodities shown in the carriers' exhibit discloses that in about 95 per cent of the rates shown, where the rates on commodities to Reno, Phoenix, or Spokane constructed by multiplying the commodity rates to Salt Lake City by the percentage which the class rates to Reno, Phoenix, or Spokane bear to the class rates to Salt Lake City, the resulting rates to the three cities named would be materially higher than the maximum rates now applied at these points as the result of restrictions prescribed in fourth section order No. 124. This exhibit is offered by the carriers for the purpose of showing that the territory intermediate to the Pacific coast cities is now enjoying a lower level of rates on most of the commodities of eastern origin than they could reasonably hope to secure upon the basis of their geographical position with respect to other points to which we have established rates upon the basis of reasonableness.

Measured, therefore, by the standards prescribed by the commission and employed by it in the establishment of rates for progressively increasing hauls from the east to the west, to and including a portion of the intermountain country itself, namely, Utah and New Mexico and up to the very doors of the remaining tier of intermountain States, it appears that the existing rates to those States are not only in harmony with the rates to the points farther east, but are lower than they would be if made with relation thereto. The reason that they are lower than they would be if so made is because they have been reduced below their normal level through the application of the maximum-rate conditions imposed upon the carriers by the commis-

sion in granting fourth-section relief upon Pacific coast traffic. The commission's administration of the fourth section, so far from resulting in rates to the intermountain country higher than reasonable, has therefore afforded to them rates lower than reasonable.

In discussing the rates established by the commission as reasonable to points east of the intermountain country it can not be inappropriate to comment upon the range of the rates so fixed. It is a favorite habit of those who complain of railroad rates to pick out some exceedingly low rate and, comparing it with one considerably higher, assert that if the carrier can handle the first-named commodity at the low rate described at some profit to itself, it must be making an exorbitant return out of the higher charge. It is, therefore, interesting to note that the commodity rates established by the commission as reasonable from Chicago to Denver and other Colorado destinations in the Colorado case, above mentioned, ranged from a rate of 32 cents per 100 pounds on pig iron to \$1.63 per 100 pounds on carpets, both in carloads. In the original Salt Lake case, decided in 1919, the carload rates established as reasonable from Chicago ranged from 40 cents on pig iron to \$2.50 on bicycles, while the range in the advanced rates approved by the commission in the last Salt Lake case was from 45 cents on pig iron to \$2.65 on automobiles. Obviously the difference in these rates can not be entirely accounted for either by reason of a difference in the cost of service or in the risk involved. Cost of service and risk assumed are only two of the factors involved in a consideration of the reasonableness of rates. The value of the service and numerous commercial conditions must likewise be given consideration. Wide variations such as these are common in connection with all traffic. They afford little or no evidence with respect to the reasonableness of the rates thus compared. It is a commonly accepted fact that if rates were graduated simply according to cost of service and insurance risk the present wide distribution of the products of the country could not continue. Some articles must be carried at less and others at more than rates so adjudged. A whole body of rates may be tested with relation to cost of service and a fair return upon the value of the property employed, but individual rates can not be made in that way, and never have been. In a special report to Congress in 1903, describing 40 years' rate making in the United States, the commission says ("Railways in the United States in 1902," Part II, p. 14):

It was discovered early that the charges for transportation of different articles of freight could not be apportioned among such articles with regard alone to the cost of carriage. This basis of determining the charges, it was found, would confine to narrow limits the movement of different articles whose bulk or weight was large in comparison to their value, while heavier articles with less bulk would be made to pay disproportionately low rates.

Under the system of apportioning the charges strictly to the cost some kinds of commerce which have been very useful to the country and have a tendency to bring different sections into more intimate business and social relations could never have amounted to any considerable magnitude and in some cases could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation added. The traffic would thus be precluded, because the charge for carriage would be greater than it could bear. On the other hand, the rates for the carriage of articles which, with small bulk or weight, concentrated great value would on that system of making them be absurdly low when compared to the value of the articles and perhaps not less so when comparison was with the value of the service in transporting them.

Accordingly it was found not to be unjust to distribute the entire cost of service among all articles carried on a basis that gave greater consideration to the relative value of the service than to the cost. Such a method would be most beneficial to the country; it would enlarge commerce and extend communication and would be better for the railroads because of the increased traffic which would be brought to them.

In the Western Advanced Rate Case of 1910 Secretary Lane, then a member of the commission, said (20 I. C. C., 307, 347-348).

The legislature may not make rates so as to confiscate the carrier's property. The carrier, on the other hand, may not make rates which are unjust to those who by economic necessity are compelled to employ its services. Here, then, we have the minimum of legislative power and the maximum of the carrier's power. Between these lies a zone indefinite and variable. Without question the carrier will tend toward the maximum, while governmental authority will be inclined—in fact, has been created—to repress this upward tendency. One moves inevitably upward to the highest rate which the traffic will bear; the other attempts to discover some relation between charge for service and cost of service.

In re investigation and suspension of advances in rates for the transportation of coal by the Chesapeake & Ohio Railway Co. (22 I. C. C., 604), Mr. Commissioner Lane said:

Is a rate unreasonable because it does not pay its full share of taxes, fixed charges, and dividends? At the end this is the question to which we come in this case. The carriers themselves having fixed these rates under the mandate of the law that they shall fix just and reasonable rates, have they justified higher rates by showing that the existing rates, which they had fixed, fall somewhat short of meeting all the related expenses which the carrier must bear, not only for transportation, but to secure an adequate return upon its property? Let us see where this doctrine would lead. If a carrier may raise all rates to a basis where each will bear its share of cost, including all costs, and no lower rate is reasonable, then it must follow that all rates are unreasonable which yield to the carrier a greater return than such cost. Under such theory what would be the rate on tea or silks, or high-priced horses, or delicate machines? Is there to be no classification of freight excepting upon the basis of cost of transportation plus insurance risk? If so, the tariffs of every railroad in the United States must suffer a revolutionary change. In all classification, consideration must be given to what may be termed "public policy"—the advantage to the community of having some kinds of freight carried at a less rate than other kinds. And this is the true meaning of the phrase "what the traffic will bear." It expresses the consideration that must be shown by the traffic manager to the need of the people for certain commodities. He, accordingly, imposes a higher rate upon what may be termed "luxuries" as compared with that imposed upon those articles for which there is a more universal demand. He also gives consideration to the fact that the rate so imposed enters into the ultimate price to the consumer to but a small degree when the article is one of high value, and that those in the community who can afford to purchase such articles can well afford to pay a rate greater than that which could reasonably be imposed upon the general public for commodities of common use. In this sense what the traffic will bear and the value of the service are analogous. No one would claim that a carrier was violating its duty under the law in charging three times the rate upon oriental rugs that it imposed upon cotton. This would not be undue discrimination as between commodities, even though it costs no more to transport the rugs than it did the cotton, assuming both to be carried at the owner's risk, for the one does not compete with the other, and one may reasonably bear a higher rate than the other upon public grounds. It must be, therefore, that this commission, under the amendment to section 1, passed by Congress, in 1910, giving to us the control of freight classification, has power to determine the reasonableness of the differences that are made between the rates made applicable to the various kinds of commodities transported. We may not say that a rate shall be fixed so as to meet the requirements or needs of any body of shippers in their efforts to reach a given market, nor may we establish rates upon any articles so low that they will not return out-of-pocket cost. Neither could we

fix an entire schedule of rates which would yield an inadequate return upon the fair value of the property used in the service given. There is, however, a zone within which we may properly exercise the flexible limit of judgment which belongs to the power to fix rates.

These are the words of the Chief Justice of the Supreme Court (206 U. S., 26). There is no flexible limit of judgment if all rates must be upon a level of cost, and out of every dollar paid to the carrier must come a fixed amount of return for capital invested. The recognition of such a doctrine has never been suggested either by Congress or the Supreme Court. A just and reasonable rate must be one which respects alike the carriers' deserts and the character of the traffic. It can not be a rate that takes from the carrier a profit and thus favors the shipper at the carrier's expense, nor is it one which compels the shipper to yield for the transportation given a sum disproportionate either to the service given by the carrier or to the service rendered to the shipper. The words "just and reasonable" imply the application of good judgment and fairness, of common sense and a sense of justice to a given condition of facts. They are not fixed, unalterable, mathematical terms. Their meaning implies the exercise of judgment, and against the improper exercise of that judgment the Constitution gives protection at least as far as the carriers are concerned. (Pp. 623-624.)

Furthermore, the commission is conscious that there is a considerable zone within which a rate may be held to be just and reasonable, and we are not inclined in this case to hold the carrier down to the minimum which would be permitted by the record, and certainly the increased rates do not exceed the maximum figure which might properly be fixed for this traffic. (P. 625.)

In considering, therefore, whether a rate is reasonable, less than reasonable, or more than reasonable, little or no consideration can be given to the cost of the service or to wide variations in the rates either on different commodities or on the same commodity under different circumstances and conditions. This condition is not peculiar to transcontinental traffic or to the relation between rates to Pacific coast terminals and intermediate points. It is a condition which, as indicated by the excerpts quoted from the commission, inheres in all rates throughout the country. Shippers themselves do not advocate a departure from the present basis of classifying and making charges. If it is the public will that rates should be adjusted rigidly on a cost of service theory as applied to each commodity, it is for Congress so to declare, but Congress has not so declared, and so far as is known no person interested in movement of freight or in the growth of commercial enterprise has advocated it; but whether the present system of measuring rates as reasonable be right or wrong, there is no reason why it should be different in one part of the country from another or different as applied to the intermountain country as compared with that applied to the entire territory east thereof. A mere showing that the carriers handle certain traffic at 32 cents per 100 pounds and other traffic at \$1.63 per 100 pounds is not, under the commission's own action, any demonstration either that one rate is less than cost or that the other is unreasonably high. Unless the entire rate structure of the country is to be revolutionized, any argument based upon comparisons such as these must be discarded.

As long as the opinion of the Interstate Commerce Commission is conclusive upon the question of the reasonableness of a rate, it must be conclusive upon the intermountain country as well as upon the railroads and upon other sections of the country, and the standards established by the commission must be applied to the intermountain rates as well as to all other rates in determining whether they are just and reasonable. As indicated by the facts stated and demonstrated by the commission's own comment upon the exhibits

of the carriers in the last transcontinental hearings, the rates now in effect in the intermountain country are not unreasonably high, but are, on the contrary, lower than reasonable when judged by the standards set by the Interstate Commerce Commission itself.

Under these conditions and as long as the rates to the coast remain no lower than those to the intermediate points, it is fair to assume that no demand will be made for a reduction of rates to the intermountain country below those now in effect; and whether the assumption is correct or not, it is evident that if such a demand were made it could be effectively met by reference to the rates prescribed by the commission itself to a portion of the intermountain country; in other words, a reduction of the rates prescribed to the level of those previously applied at Pacific coast terminals in competition with carriers operating through the canal is not necessary to afford the intermountain country reasonable rates, but, on the contrary, such action would reduce rates already found to be reasonable by the commission in a wide extent of territory, and, carried to its logical conclusion, make necessary a reduction in rates from New York to Chicago if the proper relation of rates were to be maintained. The only justification offered for a reduction of the rates to the interior has been the lower rates in effect to the coast, and with that situation removed no excuse for such reduction would remain. If, then, it be true, as it must be, that the existing rates to the intermountain country are not unreasonably high, then a reduction of those rates to the level of those previously in effect at Pacific coast terminal can not be successfully advocated as a means of producing reasonable rates in the intermountain country. Granting that the present rates to the intermountain country are reasonable, as one must if he recognizes the authority and the ability of the commission to say what is a reasonable rate, it necessarily follows that the advocates of an inflexible long-and-short-haul rule can not base their contention upon the ground that such a rule is necessary to provide reasonable rates to the intermountain country.

ABSENCE OF DISCRIMINATION.

Every locality is entitled not only to just and reasonable rates, but to rates which do not subject it to any "undue or unreasonable prejudice or disadvantage." No claim is made by the intermountain people that their rates are discriminatory in comparison with the reasonable rates which have been established by the commission to other sections of the country, or that they are subjected to undue or unreasonable prejudice by rates to the Pacific coast, which under the recent order of the commission are no lower in any instance than the rates to intermediate points, so that the only remaining question to consider is the influence of sea competition for the Pacific coast traffic, which always has been and always will be the normal condition of affairs.

INFLUENCE OF SEA COMPETITION.

While the extraordinary conditions by which sea competition for Pacific coast traffic has been minimized have at this time enabled the Interstate Commerce Commission to require a readjustment of trans-

continental rates to conform with the fourth section, by withdrawal of all Pacific coast rates which were lower than at intermediate points the inevitable return of active sea competition in the future is recognized by the commission's own statement that "the canal and the ocean are still available for commerce and the time will come when this service will be reestablished."

If when the steamship service through the canal is actively resumed, as it is certain to be, the transcontinental lines should make no effort to compete with the steamship lines for the Pacific coast traffic or should be prevented by an inflexible law from making the necessary rates to meet the sea competition, the situation would be:

1. The Pacific coast cities would derive the full benefit of the low steamship rates and thereby enjoy the benefits which naturally accrue from their geographical location.

2. The intermountain cities would have no claim upon the railroads for any lower rates than those which have been found to be not more than just and reasonable, and the interior destinations nearest the Pacific ports would enjoy lower rates than more easterly destinations, which are intermediate in the transportation by rail, to the extent that the steamship rates to the Pacific ports added to the locals to interior destinations might be employed.

This is the commercial relation which existed before the completion of a transcontinental railroad and would exist to-day if there were no completed transcontinental railroads. In other words, these communities would occupy the relative commercial position to which they are geographically entitled and there could be said to be nothing artificial about this situation.

In view of the intimation that the competition of steamships for the coast traffic is something fictitious or intangible, it seems necessary to ascertain what is disclosed by the records.

As early as 1909 Mr. Commissioner Prouty, in his opinion in *City of Spokane v. Northern Pacific Railway Co.* (15 I. C. C., 376, 386), found water competition producing a controlling effect upon Pacific coast rates and recognized the prospective increase thereof; and Mr. Commissioner Lane, in 1911, in *Railroad Commission of Nevada v. Southern Pacific* (21 I. C. C., 329, 335), said:

The commission itself, although the opportunity had frequently been presented to it, has never indorsed a rigid long-and-short-haul section. Indeed, the present provision is drawn along lines which received the tentative approval of the commission.

In passing upon the application of the carriers for authority to make certain commodity rates to meet the more acute competition which had been created by the opening of the canal, the commission, in its opinion and order of January 29, 1915, in *Commodity Rates to Pacific Coast Terminals and Intermediate Points* (32 I. C. C., 611, 621-622), said:

It is evident from the whole record that, whatever may have been the degree of competition in the past between the rail carriers and the water carriers as to the rates on these articles concerning which additional relief is now sought, we are witnessing the beginning of a new era in transportation between the Atlantic and the Pacific coasts. To secure any considerable percentage of this coast-to-coast traffic, rates on many commodities must be established by the rail lines materially lower than those now existing. * * *

As we view it, the Panama Canal is to be one of the agencies of transportation between the East and the West, but not necessarily the sole carrier of coast-to-coast business. If the railroads are able to make such rates from the Atlantic Seaboard to the Pacific coast as will hold to their lines some portion of this traffic with profit to themselves, they should be permitted so to do. The acceptance of this traffic will add something to their net revenues, and to that extent decrease and not increase the burden that must be borne by other traffic. * * *

We are of the opinion that these carriers should be permitted to compete for this long-distance traffic so long as it may be secured at rates which clearly cover the out-of-pocket cost. * * *

None of the rates proposed appear (therefore) to be open to the charge that they pay less than the out-of-pocket cost.

In passing upon fourth-section application 9813 of the carriers for authority to make certain eastbound commodity rates from California seaports to Atlantic coast seaports to meet the acute competition created by the opening of the canal, the commission, in its opinion (33 I. C. C., 480, 485-486), said:

The present rates on which the traffic is moving on these commodities from California points to the Atlantic coast are the rates controlled by the water lines. These lines must be looked upon, so far as this traffic is concerned, as the rate-making lines between the two seaboard.

Protestants from certain interior California cities appeared at the hearing, but offered no testimony in opposition to the application. It has been shown that this carrier can not secure any considerable share of this traffic from the California ports at a higher rate than is here proposed; that this rate, although relatively low, probably yields some revenue in excess of the actual out-of-pocket costs; and the proposed rates from, to, and between intermediate points do not appear to unjustly discriminate against such points. We are unable to see how any interest at any intermediate point will be adversely affected if this application be granted.

In the reopening of the transcontinental fourth section applications (46 I. C. C., 236), as a result of which all fourth section relief of transcontinental lines was withdrawn because of the temporary interruption of ocean service, the commission had before it the investigation made in a series of cases covering fully the conditions as they existed prior to the opening of the canal. It had before it the conditions immediately following the opening of the canal, as a result of which some of the orders hereinbefore described were made, and likewise had before it the conditions developed through a full year of canal operation before the diversion of the boats engaged therein to other traffic. In connection with the more recent applications of the transcontinental carriers for relief from the provisions of the fourth section, the principal lines operating a coast-to-coast service through the canal had intervened in opposition to the application of the rail carriers, asserting through their counsel a vested right to the coast-to-coast tonnage which they would exercise "if not interfered with by the Interstate Commerce Commission." (Record, Fourth section application 10172, pp. 346-347.) Officials of these lines also testified at length in the reopened case, furnishing from their own records evidence as to the tonnage which they had taken and the rates at which they took it. The commission was therefore in full possession of information as to the operations, rates, and practices of the water carriers as well as of the rail carriers.

With all this information before it, the commission in requiring rates to be realigned in strict accordance with the provisions of the

fourth section expressed its opinion upon what may be expected to follow a resumption of ocean service in 46 I. C. C., 236:

The rail carriers can not maintain, under ordinary circumstances, a level of rates between the Atlantic and Pacific coasts, between the North Atlantic ports and the ports on the South Atlantic or Gulf coast, or between points on the Pacific coast that will be successful in securing any considerable amount of traffic in competition with water carriers, without fourth section relief. We are of the opinion that the best interests of the public, of the transcontinental carriers, and of these intermountain cities in particular, will be served by a policy that permits the transcontinental carriers to share with the water lines in the traffic to and from the Pacific coast ports. The lower rates to the ports, however, when necessary, must not be lower than the competition of the boats makes necessary, and must be high enough to cover, and that by a safe margin, actual out-of-pocket costs of securing and handling the traffic. The shippers at the coast are thereby given the benefit of competing routes and competing markets of supply. The railroads are enabled to fill up their trains with traffic which, although not highly profitable, yields a revenue materially greater than the out-of-pocket costs of securing and handling the traffic, thereby adding to the net revenues of the carriers and to that extent lightening the transportation burden borne by other localities.

These transcontinental railroads can fairly expect such consideration as will permit them to continue to earn a reasonable return upon their property devoted to public use. If governmental control is so exercised as to prevent them from securing any considerable share of the business to and from the terminals and the largest possible return therefrom, such return must be derived from the other communities along their lines. It is perfectly clear that the Pacific coast cities have always paid lower transportation rates than they would have paid were it not for the facilities they have enjoyed for bringing manufactured articles from the eastern manufacturing districts and for sending east the products of the coast States by water. It is also clear that the intermountain section of the country has paid and now pays rates for the transportation of these manufactured articles which are higher proportionately than is paid by the coast cities and probably higher than it would be necessary to maintain if the rates to the coast cities could be maintained at a level more nearly proportionate to the service given.

The situation, however, is one which these carriers can not control. The advantage enjoyed by these Pacific coast cities is, in the long run, a permanent advantage. (268-269.)

When the water competition again becomes sufficiently controlling in the judgment of the carriers to necessitate the reduction of the rates to the coast cities to a lower level than can reasonably be applied at intermediate points, the carriers may bring the matter to our attention for such relief as the circumstances may justify. Competent proof must be submitted in connection with such applications of a fairly regular water service between the two coasts, the adaptability of the traffic to water competition, principal points of origin of the traffic, range of rates afforded by the water lines, principal points of consumption, and the ports upon the two seaboard at which the water carriers receive and deliver freight.

We are not unmindful of the claims of the carriers concerning the disadvantage under which they labor in being unable to reduce their rates promptly when necessitated by the competition of the water carriers. One of the primary purposes of the act to regulate commerce was to preserve competition between carriers. Competition involves a striving between or among two or more persons or organizations for the same object. There can exist no even-handed striving between two persons when one is bound and the other is free, and the maximum of real and effective competition can not exist between these boat lines and rail lines when one side is free promptly to make any rate it desires, while the other is so restricted by statutory requirement as to be unable to take the necessary steps for the prompt protection of its business. We are, however, also mindful that one of the primary purposes of building the Panama Canal was to assist in the development and maintenance of an active, efficient, and profitable water service between the two coasts. It is not our purpose to put upon these carriers any undue hardship in their attempt to meet such competition as the future holds for them. Such fourth-section applications as they may find it necessary to make with reference to this traffic will be disposed of with such celerity

as the circumstances may permit. Neither is it our purpose to permit the maintenance of rates to or from Pacific coast points at a level that will render this service unattractive to the boat lines. (276-277.)

Commissioner Harlan dissented in the above case upon the ground that as there had been no permanent withdrawal of ocean service existing rates at terminal points which were due to their natural advantages should not be disturbed. There was no disagreement between Commissioner Harlan and the majority of the commission as to the future, with respect to which Mr. Harlan said in 46 I. C. C., 236, 279:

Finally, the Panama Canal was constructed at great public cost and largely for the purpose of tying the two coasts together by an all-water route that will endure, supposedly at least, for all time to come; and the new merchant marine now under construction gives us assurance that this great national all-water highway must necessarily be a permanently vital factor in the coast-to-coast commerce.

In the development of transportation nothing has yet appeared to suggest that commerce will ever move by land so cheaply as by the natural water routes. So far, therefore, as may now be anticipated, the all-water route through the canal must control and for the generations to come be the basis, in a large degree, of the trade and commercial relations between the intermountain cities and the competing communities that are favored by being ports on the Pacific Ocean. And unless the economic advantage of being terminals for an all-water route from coast to coast be taken away from the Pacific coast cities by some upheaval of nature or by legislation, they apparently will have in the future what they always have had in the past, namely, lower all-rail rates on commerce that can and does move freely by water than the less distant intermountain cities in the nature of things may expect to have. In all countries intermountain cities are to be found the prosperity and commanding position of which grow largely out of the fact that they are on the water and therefore have the benefit of that cheaper mode of transporting their commerce, and in many reported cases we have said that such communities may not lawfully be deprived of the benefits of their location on navigable waters by compelling the rail carriers that serve them to maintain rate adjustments that ignore that natural advantage.

The six regular steamship lines, comprising an aggregate fleet of 49 ships, which inaugurated service upon the opening of the canal, with an estimated annual cargo capacity of 1,000,000 tons in each direction, were supplemented by less regular sailings of the ships of other owners. During the first 12 calendar months of canal operation—September, 1914, to August, 1915, inclusive—the official publication of the Panama Canal Zone, known as the Canal Record, shows the westbound tonnage carried from Atlantic to Pacific ports of the United States through the canal to have been 1,049,990 tons.

In the plea of the carriers to the Interstate Commerce Commission for additional relief, after the opening of the canal in 1914, upon the heavier seagoing commodities which have been referred to as schedule C, the transcontinental lines showed that during the previous calendar year 1913 the combined tonnage of those commodities which had been handled by the railroads and the steamship lines from territories designated A and B, embracing all points east of a line drawn through Buffalo, Pittsburgh, and Wheeling and north of the Potomac River, to Pacific coast terminals had aggregated but 961,768 tons. This does not mean that the railroads lost every ton of this class of freight from the Atlantic seaboard territory, but that the canal lines took a volume of freight consisting of other commodities than those embraced in schedule C and reached for their business to points west of the Buffalo-Pittsburgh-Wheeling line as far inland as the Missis-

issippi River, and that the westbound tonnage taken by the canal was more than the aggregate of the tonnage of heavy seagoing commodities embraced in schedule C originating in the entire territory between the Buffalo-Pittsburgh-Wheeling line and the Atlantic Ocean.

These figures are simply used to support the findings of the commission that the competition of the steamship lines for Pacific coast traffic is a real, substantial force which must be recognized.

In passing upon the applications of the carriers in the southeast for authority to continue lower rates to more distant than to intermediate points, the commission made considerable analysis of the out-of-pocket cost (30 I. C. C., 153, 175-176-177) :

There is little testimony in this record that indicates the actual average cost of handling freight over these lines. From an examination of the reports of the carriers made to the commission for the fiscal year ending June 30, 1912, it is found that the average load per car for that year of the Atlantic Coast Line, the Seaboard Air Line, and the Southern Railway was 14.07 tons; the total car-miles of the three systems, 525,837,008; the total freight revenue, \$79,394,400.24; and the average revenue per freight-car mile, 15.1 cents. The average ratio of operating expenses to operating revenue on these three systems was 67.51 per cent. Assuming that the ratio of operating expenses to operating revenue was the same for the freight business as for the passenger business, the average operating expense per car-mile must have been 10.19 cents. The total operating expenses of the three system were \$82,517,806.15. The total expenses which are summarized in the reports under the head of "Transportation expenses and traffic expenses" were \$44,194,695.02. These traffic and transportation expenses were 53.68 per cent of the total expenses. The average traffic and transportation expense per car-mile on these three systems would be 5.47 cents.

These traffic and transportation expenses include the cost of superintendence, outside agencies, advertising, traffic associations, industrial and immigration bureaus, stationery and printing, dispatching trains, station employees, station supplies and other station expenses, yardmasters and their clerks, yard conductors and brakemen, yard switching and signal tenders, yard supplies and other yard expenses, fuel, water, lubricants and other supplies for yard and road locomotives, road enginemen, road trainmen, train supplies and other train expenses, operation of interlockers and block and other signals, operation of telegraph and telephone service, loss and damage to freight and baggage, damage to property and stock on right of way, injuries to persons, and many other items, including practically all of the expenses that must be incurred in the actual handling of freight.

While it is not demonstrated what the actual out-of-pocket costs are, brought about by the acceptance of this long-distance low-grade freight, it is, however, reasonably certain that they can not exceed the total costs as represented in these traffic and transportation expenses. This long-distance low-grade traffic of the character of cement, brick, coal, fertilizer, iron articles, lumber, etc., moves under relatively high carload minimums, varying from 30,000 to 50,000 pounds per car.

From the tariffs examined it may fairly be concluded that this freight moving at low rates moves under an average carload minimum of not far from 40,000 pounds. If the actual expense be included within the traffic and transportation expenses and amount to 5.47 cents per carload per mile, the freight carried in an average car of 20 tons of freight could be handled with an out-of-pocket cost of not exceeding 2.73 mills per ton-mile.

An examination of the tariffs and rates submitted in connection with this case discloses no rates that pay less than 3 mills per ton-mile, and the testimony of the petitioners is to the effect that any freight paying less than 3 mills per ton-mile is looked upon by them, as perhaps paying less than the actual out-of-pocket costs.

It may fairly be concluded from the testimony that there is none of these rates for long-distance traffic which pays less than the additional cost of handling, and their acceptance by the railways results in some net revenue, and does not result in an increased burden upon traffic to and from intermediate points.

The level of rates in effect to Pacific coast terminals before the opening of the Panama Canal was such that there was little or no contention that they were less than the out-of-pocket cost. In fact, the effort of the intermountain communities in those cases preceding the opening of the canal was to convince the commission that the rates then applicable to Pacific coast terminals would be reasonable as applied at intermediate points. The opening of the canal made it necessary for the transcontinental lines to make lower rates to meet the increased sea competition. In connection with their application filed for this purpose and known as the schedule C case, to which brief reference has already been made, transcontinental lines applied the basis set forth in the foregoing extract from the decision in the southeastern case to the operations of the Atchison, Topeka & Santa Fe as representative of the transcontinental haul, from which it appeared that none of the rates proposed were below out-of-pocket cost.

The figures of all the carriers, to which the formula set out in the report in the southeastern case was applied, are on file with the Interstate Commerce Commission, open to inspection by anybody, and published each year in the commission's statistics of railways. No representative of the intermountain country challenged the correctness of the conclusion drawn from the application made. The commission made some further independent investigation of the matter, as disclosed on pages 623 and 624 of its opinion of schedule C case (in *Commodity Rates to Pacific Coast Terminals and Intermediate Points*, 32 I. C. C., 611), from which it reached the conclusion definitely stated that the rates proposed were not less than out-of-pocket cost. Subsequently the Southern Pacific Co. sought authority to establish rates on asphaltum, beans, barley, canned goods, dried fruit, and wine from California ports to Atlantic ports to meet competition of the canal carriers, which had resulted in depriving the Sunset Route of practically all of the business that it had previously enjoyed in the carriage of these California products to the eastern seaboard. The rates proposed were the lowest which had ever been made for application between the two coasts. It was believed that no higher rates would attract a share of the business. Prior to applying for authority to make the rates, however, an exhaustive investigation was made of the cost of handling this traffic as additional business to that already being handled and the conclusion was reached that with the high minimum carload weights proposed, the rates would yield some profit over and above the out-of-pocket cost, and before an application was made to the Interstate Commerce Commission, these figures were reviewed and approved as conservative approximations of cost by Mr. Kruttschnitt, the chairman of the executive committee of the Southern Pacific Co., an operating official whose qualifications are fully known to this committee. With respect to the figures so submitted, as to which full opportunity was given for cross-examination at a public hearing of the application, the commission said (33 I. C. C., 480, 484) :

While the above analysis may not be altogether conclusive in showing the actual additional cost of transporting this freight from San Francisco to New York, it is fairly convincing that such additional costs do not exceed the figure named.

It will therefore be seen that the commission has in each case, where the rate proposed was so low as to challenge the inquiry that it might be below the cost of handling the traffic, conducted an examination of its own, or had evidence submitted by the carrier, subject to check and examination by the commission, as a result of which the commission has reached the conclusion that the rates sought to be made were in excess of the out-of-pocket cost of handling the business as additional traffic.

While, under the other provisions of the law, the commission is empowered to correct unjust or unreasonable rates and to remove undue discrimination which it may find to exist, and, in its administration of the fourth section, the commission has read into it the standards created by the first and third sections, the virtue of the present provision of the fourth section is that it enables the commission to prohibit the creation of undue discrimination by declining to authorize the establishment of rates which in its judgment would create undue discrimination. If the Interstate Commerce Commission can be intrusted by law with the responsibility of fixing just and reasonable rates and of correcting any undue or unreasonable preference which may be found to exist, can it not be intrusted with the authority to prevent the creation of undue or unreasonable preference or advantage to any locality by refusing to authorize rates which would create any such undue or unreasonable preference or advantage; and under these circumstances how are the rights of any community jeopardized by the delegation of such authority to the commission?

The present rates to the intermountain country which have been declared by the commission to be not more than reasonable do not become unreasonable by reason of lower rates to Pacific coast terminals which the commission may find to be necessary to meet the rates by sea, nor do the railroads create undue discrimination against the intermountain country by rates to the Pacific coast which shall have been found by the commission to be no lower than the equivalent of the cost of shipment by sea. There is no discrimination against the intermountain country except that which is created by the steamship rates to the Pacific coast and which would continue to exist if the rail carriers did not meet the steamship rates and continue to participate in the Pacific coast traffic; and obviously the commission would not permit the railroads to make rates to the Pacific coast which would create undue discrimination against the intermountain country.

COMMISSION'S AUTHORITY REQUIRED TO MEET FUTURE COMPETITION.

A readjustment by which Pacific coast rates are no lower than rates at intermedite points having now been made effective by withdrawal of all fourth section relief, we need only consider the conditions under which the transcontinental lines will have to proceed when ocean service is actively resumed. Under the existing provision of the fourth section, they will apply to the Interstate Commerce Commission for authority to make rates to or from the Pacific coast which are found necessary to meet the rates of the ocean lines and retain a fair share of the Pacific coast traffic. To support such application they will expect to show:

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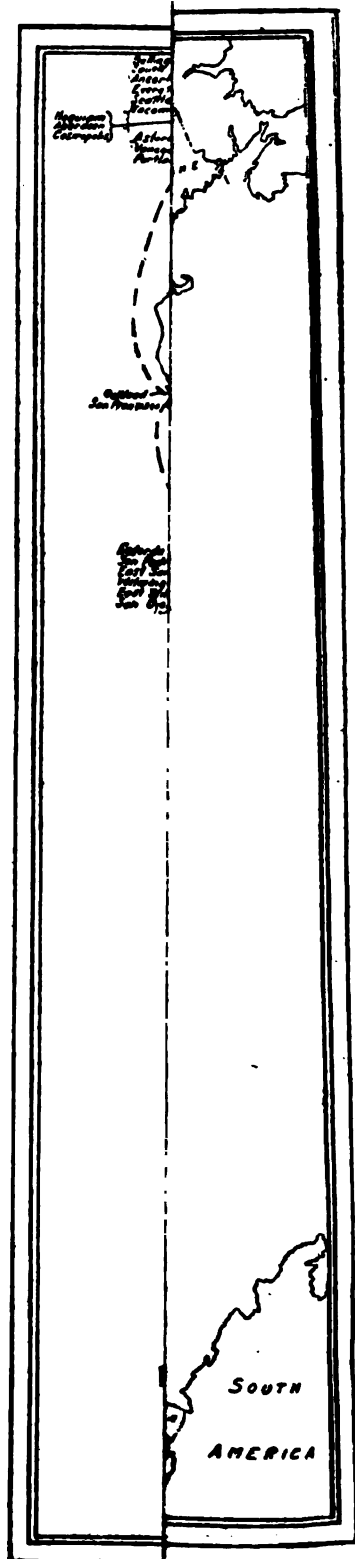
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(a) That the proposed rates to or from the more distant points are necessitated by conditions which have not been created by the applicant carriers, that they are less than reasonable, and that they are subnormal.

(b) That the proposed rates yield revenue in excess of the actual cost of handling the traffic upon which they are to apply, thereby adding something to the net revenue and avoiding any increased burden upon intermediate points.

(c) That each of the commodities upon which such rates are to apply is actually susceptible to sea competition, thereby reducing the number of commodities to a minimum upon which the long-and-short haul provision is waived.

(d) That, taking into account the relative disabilities of the sea route and the advantages of the applicant carriers in the cost of insurance, switching, lighterage, loading, or unloading charge, if any, and the measure of intangible disabilities or advantages, if any, the proposed rates are not less than the equivalent of the rates by sea, accomplishing only such a fair equalization as will enable the applicant carriers to enjoy a fair share of the traffic; and, finally, if the proposed rates are not justified by such a test, the Interstate Commerce Commission will be expected to determine what rates are justified.

I submit a graphic map showing—

First. By a hatched red line, a steamship line through the Panama Canal between New York on the one hand and Pacific coast ports on the other hand.

Second. By a hatched red line between New York and Galveston, Tex., and a solid blue line between Galveston and Pacific coast ports, the "Sunset Route" of the Southern Pacific lines, extending from New York to Pacific ports.

The map referred to is here shown.

The steamship distance between New York and Galveston is 2,160 miles and the rail distance between Galveston and San Francisco is 2,167 miles, so that one-half of the "Sunset Route" is composed of a steamship line. By what process of reasoning can it be contended that this steamship line should not be permitted to engage, unhampered, in the traffic between New York and San Francisco at rates which the Interstate Commerce Commission finds to be no lower than the equivalent of the prevailing rates by steamship lines operating through the canal, and how is the interest of any intermediate community prejudiced by the "Sunset Route" taking some of the traffic which would otherwise move by sea? As a matter of fact, are not the intermediate communities benefited by enabling this steamship line between New York and Galveston to secure a sufficient volume of traffic to maintain a higher class and more frequent service than it would be possible to maintain if necessary to surrender the Pacific coast tonnage entirely to the canal lines?

Upon what theory can it be said that when the sea competition for such eastbound commodities as asphalt, barley, beans, and canned goods, as disclosed by the record, shall return, this line should be excluded from the carriage of this business; and upon what theory can it be asserted that if these conditions should again arise the commission should be deprived of jurisdiction to inquire into all

the facts, hear all the parties, and grant such relief as the circumstances of the case may warrant?

Certainly it will not be said that the making of a lower rate for the longer haul under such circumstances is so manifestly unfair and unjust that it should be absolutely prohibited by law. On the contrary, the facts speak for themselves, and would seem to make a *prima facie* case for the granting of such authority. Certainly the commission, which is charged with the duty generally of seeing that all rates are reasonable and that no undue discrimination is practiced, may be safely intrusted with the jurisdiction to determine whether in such a case lower rates should be permitted than at intermediate points, and, if so, what measure of rate is necessary to meet the competition of ocean carriers, and what provision, if any, should be made to protect the interior in the enjoyment of reasonable and nondiscriminatory rates.

Third. By solid blue lines are shown representative all-rail routes between New York on the east, and San Pedro, Oakland, San Francisco, Portland, Tacoma, and Seattle on the west.

Why should these all-rail routes be prevented from making rates which the Interstate Commerce Commission may find to be the equivalent of rates by sea to or from Pacific ports because they happen to carry this traffic through Salt Lake City, Reno, or Spokane, and how are the interests of these intermountain communities prejudiced by permitting these all-rail routes to carry the same traffic that would otherwise move by sea or partly by water and partly by rail?

In passing upon the applications of both the all-rail lines and the Sunset Gulf line for authority to make, on westbound traffic to Pacific coast terminals, lower rates than applied to intermediate points in order to be enabled to meet at those terminals the competition of the ocean carriers following the opening of the Panama Canal, it appeared that the rates of the ocean carriers had been very greatly reduced below those in effect before the canal was opened. The following extract from the opinion of the commission (32 I. C. C., 611, 621) granting authority to make the rates desired is illustrative of the situation:

It was shown that the total tonnage moving by water from the Atlantic to the Pacific coast and to the Hawaiian Islands for the year 1911 was 397,974 tons; for 1912, 451,582 tons; for 1913, 434,115 tons; while for the month of September, the first full month after the opening of the Panama Canal, the tonnage from the Atlantic coast to the American Pacific coast ports was 77,915 tons. While the movement by the Panama route for a month may not be a reliable index as to what may be expected as the result of a year's operation, it is indicative of a greatly increased activity on the part of the water carriers. The testimony shows also a reaching out by these water carriers to territory from which heretofore they have drawn but little if any traffic and the movement by water of various commodities that heretofore have moved almost exclusively by rail. Prominent instances of these are the following: A shipment of 32 cars of cast-iron pipe from Birmingham, Ala., by rail to New Orleans, thence by water to the Pacific coast; a shipment of paper bags from Sandy Hill, N. Y., via New York and ocean; shipments of catsup from Rochester, N. Y., via New York and ocean; 140 cars of structural iron originating in various parts of Pennsylvania; 50 cars of wire fencing from various points in Pennsylvania; 1,200 tons of rails from Lorain, Ohio; 653 pieces of wrought-iron pipe from Wheeling, W. Va.; from 10,000 to 15,000 tons of wrought-iron pipe from Youngstown, Ohio.

It was upon facts such as these that the commission based its conclusion, already quoted, that whatever might have been the degree of

competition in the past a new era had begun in transportation between the Atlantic and the Pacific coast, and that to secure any considerable percentage of the coast-to-coast traffic lower rates than had previously prevailed must be made by the rail carriers. If these conditions should again arise, as the commission itself predicts they will, upon what theory should the rail lines be required to surrender this traffic to the ocean lines, and upon what theory should the commission be deprived of jurisdiction to inquire into all the facts, hear all the parties, and grant such relief as the circumstances of the case may warrant? If upon such an inquiry the commission is to determine what rate is actually necessary to meet the competition at the port, and the carrier is forbidden to make any lower rate, it would seem that the interior is fully protected against undue discrimination. Certainly, with the broad powers that the commission has for the establishment of reasonable rates and the removal of discrimination, there is no reason why it should not have jurisdiction to determine whether, in such a case, authority to charge less for the longer than the shorter haul should be granted, and if so, upon what terms?

INFLEXIBLE LAW INJURIOUS TO BOTH CARRIERS AND PUBLIC.

The transcontinental lines can not be excluded from this traffic without seriously impairing their efficiency and usefulness. They can not subsist upon the traffic to and from the interior without serious impairment of their gross and net earnings, and consequently without serious impairment of their service and of their ability to provide additional facilities required. It is, of course, clear that they can not engage business in competition with the sea except at rates lower than those which they can afford to make on all traffic. In other words, to apply to all traffic the sea-compelled rates would impose a greater burden than the railroads could bear, because it would mean that traffic as a whole would be carried at rates which would be insufficient to cover all elements of cost, fixed charges, etc. To require them to reduce their rates on business to the intermountain country to the level of sea-compelled rates, not as a measure of establishing reasonable rates to the intermountain country but simply because of the lower rates made to the coast cities, would be to punish them for competing with the ocean carriers.

The question immediately arises as to what would be the effect upon the rates to points farther east, to which the present rates to the intermountain country are fairly related, if the rates to the intermountain country were reduced to the level of those which it may be necessary to make in the future to meet the sea competition on the coast? Upon much of this traffic it is certain that such reductions to the intermountain country would necessarily involve reductions to a widespread territory to the east thereof, penalizing not simply the transcontinental lines but the lines operating in the Middle West if they continued to participate in the movement of transcontinental freight.

For example, the rate on the principal iron and steel articles, in carloads, from Pittsburgh territory to Pacific coast terminals, which was necessitated by steamship competition after the opening of the canal, was 65 cents per 100 pounds, while the rate which the commission had approved to Salt Lake City was \$1, and the rate which had

been found reasonable to Denver, Colo., was 76 cents; so that, to have been required to apply as maximum at intermediate points the rate compelled by sea competition at San Francisco would have reduced 35 cents per 100 pounds the rate which the commission had approved to Salt Lake City, and would have reduced by 11 cents per 100 pounds the rate which the commission had found reasonable to Denver.

In its latest decision covering transcontinental rates (46 I. C. C., 236, 264), the commission said:

It is evident that if it should be concluded that the present rates to the Pacific coast terminals on all these commodities are sufficiently remunerative and should be applied as maxima at intermediate points, the result would be far-reaching. The rates from Chicago and points east thereof on all the articles in both schedules B and C would be reduced to a large part of the territory in the States of Washington, Oregon, Idaho, Montana, Utah, Nevada, Colorado, New Mexico, Arizona, and California by amounts which, on the schedule C list, vary from 15 to 45 cents, and on the schedule B items from 5 to 74 cents.

But this is not all of the serious effect which an inflexible long-and-short-haul provision would have upon the rate fabric of the country. If the carriers could afford to adopt the policy of applying as maxima at all intermediate points the rates which are necessary to retain a share of the traffic to Pacific coast terminals, the practice would be absolutely destructive of the normal relationship of rates to the intermountain country and rates to Colorado and even points east thereof. The rate to Salt Lake City would be as high as the rate to Reno, and the rate to Denver would be as high as the rate to Salt Lake City, on every commodity upon which compelling sea competition is encountered. Such a requirement would therefore create discrimination between interior points of destination, which as a permanent rate adjustment would be unwarranted and destructive.

Doubtless the intermountain advocates of an inflexible fourth section have been inspired by the belief that the transcontinental lines would not retire from competition with the sea for the traffic to Pacific coast terminals, and that the intermountain cities would therefore obtain rates far less than reasonable and enable Salt Lake City, for example, by enjoying the same rate as Colorado, to reach into the territory which legitimately belongs to Colorado, but it is hardly necessary to emphasize the statement that the transcontinental lines could not afford to adopt such a rate policy when it is realized what an extensive discrimination such a policy would create and what an intolerable rate fabric throughout the country would result from it.

For the months of January, April, July, and October, 1916, during which period there was no substantial movement by water, the tonnage moving from points on the east of the Missouri River to deep-water ports in the State of California was 307,284 tons of domestic traffic and 51,073 tons of export traffic, or a total of 358,357 tons; and, to deep-water ports in Oregon and Washington, 199,446 tons of domestic traffic and 189,118 tons of export traffic, or a total of 388,564 tons. These figures were prepared at the request of the Interstate Commerce Commission in connection with its hearings of the reopened fourth section transcontinental cases, and the months selected upon the theory that they represented approximately one-third of

the year's business. The present annual movement from eastern points to Pacific coast ports may therefore be fairly estimated as 1,075,071 tons to California ports and 1,165,692 tons to north coast ports. While some part of this tonnage consists of articles not hitherto carried by water the major part of it consists of commodities which are susceptible to transportation by sea, and it is fair to assume that all of this preponderance of the tonnage would eventually move by water inasmuch as substantially all of such articles are produced along the Atlantic seaboard within easy reach of the ocean lines.

Traffic to the deep-water ports, however, is not the only traffic which would be lost to the transcontinental railroads unless they are able to make rates which are a fair equivalent of the ocean rates, all circumstances and conditions considered. To substantially all the State of California and all that part of the States of Oregon and Washington west of the Cascade Mountains the rates which the carriers found it necessary to make to the Pacific coast ports to meet the competition of the ocean lines, plus the local rates from the ports to the interior district named, were lower than the maximum rates prescribed by the commission and much lower than reasonable rates to the territory named based upon the rates prescribed by the commission to territory farther east, as already described.

As the rail rates to Pacific coast ports were higher than the ocean rates, it necessarily follows that the combination of the ocean rate to the port plus the rail rate to the interior was still lower than a reasonable rail rate to the interior. Indeed, a very considerable proportion of the business moved by the ocean carriers was from or to points within the interior of Pacific coast States. Unless the railroads are enabled to make rates to the deep-water ports, which are a fair equivalent of the rates by sea, it is therefore apparent that they will lose not only the business to the ports themselves, but would also lose the through haul on the business going to interior portions of the States named. For the months of January, April, July, and October, 1916, statistics furnished to the Interstate Commerce Commission, as above described, show that the total tonnage moving to this district from the territory on and east of the Missouri River was, to interior California, 289,148 tons; to interior Oregon and Washington west of the Cascade Mountains, 8,979 tons, or the equivalent of an annual movement of 867,444 tons to the interior of California and 26,937 tons to interior Washington and Oregon west of the Cascade Mountains. The sum total of the annual tonnage is therefore, to California deep-water ports and interior points, 1,942,515 tons; to Oregon and Washington deep-water ports and interior points west of the Cascades, 1,192,629 tons, making an aggregate of 3,135,144 tons per annum.

The Southern Pacific started as a California institution. It was constructed under the Pacific railway acts, which had for their purpose not the construction of railroads whose functions would be limited to the carriage of commodities between Pacific coast ports and near-by interior communities, but railroads to provide through transportation between the Atlantic and Pacific seabords. At the time that these acts were passed, this project was as much a governmental project as was the construction of the Panama Canal. The old Central Pacific Railroad, a part of the Southern Pacific system,

extends from Ogden through the States of Nevada and California to San Francisco. The southern route of the Southern Pacific Co. after passing the Rio Grande extends across the arid regions of New Mexico and Arizona into the State of California and thence to Los Angeles and San Francisco. There is substantially no local business on these lines east of the California State line, and indeed little local business in much of the eastern portion of the State of California. The people served by these lines live at the Pacific coast ports or within a relatively short radius therefrom, when the whole length of the line is considered.

As we have seen, there is an annual movement of 1,942,515 tons to points within the State of California. Under a policy which would exclude this company from participation in the through transportation of that traffic from the east, its function with respect thereto would be limited to short hauls from the coast to interior cities to the extent that the traffic went to the interior, while to the extent that it went to the deep-water ports it would be entirely excluded.

The withdrawal of this amount of through traffic from the lines across New Mexico, Arizona, Nevada, and the eastern portion of the State of California, would have little appreciable effect upon the cost of maintaining the tracks of those companies in those States. It would have no appreciable effect upon the cost of administering the property and no effect upon the amount required to meet the payment of interest. There would be no compensating feature in the revenue earned by carrying from the ports into the interior the business handled by the ships to the ports, for the California terminal lines receive on business going to the interior not only their proportion of the rate to the Pacific coast port but the full amount of the excess over the port rate.

Unless the rail lines are permitted to make rates which will hold this business, the terminal lines—the Southern Pacific, Santa Fe, Northern Pacific, Great Northern, Chicago, Milwaukee & St. Paul, Oregon-Washington Railroad & Navigation Co., Los Angeles & Salt Lake, and Western Pacific—will lose all of the net revenue now derived from the port rate upon this exceedingly large volume of traffic. Just exactly what that loss would be in dollars is difficult of computation, and, in fact, it seems hardly necessary to compute it. As has been seen, the rates necessary to hold a portion of this business, while less than reasonable, are in excess of the out-of-pocket cost when handled as additional traffic. The amount of that excess varies with every shipment according to the rate charged, the distance hauled, and the number of tons loaded into the car, the actual cost of handling per ton being, of course, in direct inverse ratio to the load per car. Considering the distance hauled and the high minimum weights prescribed on sea-competitive traffic, it is apparent that the contribution of this business to the net revenues of the terminal transcontinental lines amounts to many million dollars annually. These amounts can not be withdrawn from their net revenues without impairing their efficiency and usefulness. It is also clear that they can not engage in business in competition with the sea except at rates lower than those which they can afford to make on all traffic; in other words, to apply to all traffic the sea-compelled rates would yield an inadequate revenue, because it would mean that the traffic

as a whole would be carried at rates which were not sufficient to cover all elements of cost, fixed charges, etc.

Some of the lines named operate through other sections of the country, but others, namely, the Western Pacific and the Salt Lake Line, are laid exclusively in the district in question, and it is perfectly obvious from the figures cited that they could not subsist if they are excluded from participation in traffic to California, and must depend upon that to Nevada and Utah.

If the transcontinental terminal lines are to be shut out from this business, with consequent loss of many millions of dollars of net revenue, and are to maintain their efficiency and usefulness, it is apparent that the loss would have to be made up by an increase in rates upon the remaining traffic. In this connection, there is another element which must not be forgotten, and that is that the Pacific coast produces more than it consumes and its products must find a market in the distant parts of the country in the East. Again using the California situation as an example, if the California terminal lines are forced to retire from participation in the westbound movement of commodities to California, amounting to 1,942,515 tons per year, it is clear that cars in which the products of the Pacific Coast States are moved eastward must go back empty instead of under load. This means that the expense of moving a car westbound, which may now properly be charged to the westbound traffic, would then have to be charged against the eastbound traffic, and would require substantial advances in the eastbound rates.

This is true not only of the eastbound tonnage from the Pacific coast itself but from the intermountain States as well. In so far as the States of Arizona, Nevada, and New Mexico contribute anything substantial to the revenues of the transcontinental lines, that contribution is derived from their outbound tonnage and the fuel and supplies incident to the production thereof. That is to say, the traffic of these arid regions consists chiefly of the products of the mines and there is but a limited amount of agriculture and other products. The prosperity of a community depends on what it produces and not on what it consumes. It would seem that the true interest of the intermountain country was in the maintenance of a basis of rates upon its products outbound which would extend their markets and stimulate production.

The transcontinental lines have sought to establish and maintain such a basis of rates upon the outbound products of the intermountain country. It is perfectly obvious that if the net revenues now flowing from the traffic to the coast States are to be withdrawn, that loss must be made up by an increase in rates, and if the empty-car haul westbound is to be increased the loss of net earnings incident to the one and the increase of operating costs incident to the other must both be made up by an increase in rates upon the traffic remaining, including the rates on the outbound products of the intermountain country. If, therefore, commercial conditions would permit the advancing of rates upon the remaining traffic to an extent necessary to make up the loss of net earnings from the traffic removed and the increase in the cost of conducting the traffic remaining—that is to say, if such an advance would not result in rates so high, relatively, as contrasted with the rates from points of production in other sec-

tions of the country competing with producing points in the intermountain and coast States as to destroy the traffic—then the transcontinental lines would have lost nothing; but the public, so far from gaining anything, would be required to pay higher charges than are now imposed.

If, on the other hand, competition with other sources of supply would prevent the necessary increases in the eastbound rates, all of the loss in net earnings from the traffic withdrawn and all of the increase in operating expenses on the traffic remaining would have to be made up, if possible, by an increase in the local rates within the territory served by these lines where there was no element of competition and in the rates to the intermountain country on the things purchased in the East. If such should be the result, the net effect would be that the carriers would not have lost any revenue, but the consuming public, not only in the intermountain country but in the entire local territory served by these lines, would have to pay higher rates upon the things that they consumed. If, as is probable, the limit to which rates on the outbound products of the far West could be advanced without killing the traffic is such, and the limitations placed upon the ability of the transcontinental lines to advance local rates are such that the transcontinental terminal lines could not recoup in full their losses in net earnings on the traffic withdrawn and their increased operating expenses on the traffic remaining, it is obvious that their efficiency and usefulness will have been undermined and their ability to provide the additional facilities required for the upbuilding of the country seriously impaired. No minute mathematical calculation is required to demonstrate the serious blow which would be rendered to the transcontinental lines, and through them to the public that they serve, if they are required to retire from business to the Pacific coast.

On the other hand, to require them to reduce their rates on business to the intermountain country to the level of sea-compelled rates, not as a measure of establishing reasonable rates to the intermountain country, but simply because of the lower rates made necessary to the coast cities, is to punish them for competing with the ocean carriers. There is no room for any such punitive measure in a constructive program of railroad regulation. Furthermore, results of this policy would be disastrous, if not ruinous, to many carriers other than the transcontinental terminal lines. The review already made of the level of reasonable rates established by the commission for successively increasing hauls from the Atlantic seaboard to the far west and the relation of the rates so fixed demonstrates that a leveling of the rates to the intermountain country to those which may be required by the stress of ocean competition at Pacific coast ports would not only reduce the rates to that district but would extend much farther east. The statistics furnished to the commission in the case already referred to covering the four months of 1916 hitherto described showed that during that period there was a movement of 699,977 tons to the States of New Mexico, Arizona, Wyoming, Colorado, Utah, Nevada, Idaho, Montana, and points in Oregon and Washington east of the Cascades, equivalent to 2,099,931 tons per annum, which, added to 867,444 tons to interior points in California, and 26,937 tons to interior points in Oregon and Washington west

of the Cascade Mountains, makes an aggregate of 2,994,312 tons—which, it will be observed, approximates the tonnage from which the carriers would have to retire if compelled to accept the other horn of the dilemma. This is a conservative estimate, because it does not include any business to points east of Colorado, whereas on many commodities the rates to Kansas and Oklahoma, for example, would also be reduced. Furthermore, as already pointed out, if relationships of rates established by the commission are to be taken into consideration at all, the reductions to the intermediate country would be cut by observance of the Pacific coast rate as a maximum, but in order to preserve a fair relationship the rates would be affected all the way across the country, even the rates from New York to Pittsburgh and Buffalo.

Commercial jealousy between rival jobbing centers is not confined to the Pacific coast and intermountain communities. It exists throughout the country, and a very considerable proportion of the cases before the Interstate Commerce Commission deal with the relationship which should be maintained in the rates from or to rival jobbing centers. The commission has, for instance, fixed the relation of rates as between El Paso and Texas common points and between Texas common points and Dallas. It has fixed the relation on iron and steel articles from Pittsburgh to Fort Smith, Muskogee, and Oklahoma City, respectively, while a definite relation not fixed by the commission but so commonly observed as to have become an almost sacred rule of rate making, applies between Fort Smith and Little Rock, whose rates in turn must be adjusted with some relation to those at Memphis. It is inconceivable that a blanket rate on iron and steel articles from Pittsburgh to all points from Fort Smith, Ark., to San Francisco, could be long maintained. To attempt to do so would be to disrupt present commercial and trade relations, not as between San Francisco and Phoenix, which have already been adjusted to natural conditions, but between centers within the Mississippi Valley and from the Mississippi River to the Rio Grande and the Rocky Mountains, far removed from any legitimate influence of a controversy between San Francisco and Phoenix. The havoc that would be played with the entire rate structure of the country by endeavoring to apply at intermediate points the maximum rates which may be necessary to meet the competition of the ocean carriers at Pacific coast ports is indescribable and is nowhere better understood than by the members of the Interstate Commerce Commission. Its direct and indirect effects carried to their logical conclusion would require a reduction in the rates from New York to Pittsburgh if a proper relation of rates were to be observed. The application of the sea-compelled rates at the coast to intermediate points is not a matter which concerns the transcontinental terminal lines alone, but is of vital concern in its direct influence upon practically all railroads operating west of the Missouri River, and must necessarily affect the rates of lines operating between the Mississippi and Missouri Rivers and between the Mississippi River and Arkansas and Texas, and from whose influence not even the lines east of the Mississippi River would be free. Any attempt to impose the sea-compelled rates at the coast as maximum rates at interior points would in its direct effect be disastrous upon the revenues of many

lines, while, if its influence were permitted to stop there, it would create a most artificial system of rates and rate relationships as between points far removed from the Pacific coast.

Again, it requires no minute mathematical calculation, tracing out as to each commodity the point farthest east to which the rate would be cut and calculating the consequent losses of revenue to the lines west of the Mississippi River, to demonstrate that the revenues of substantially all of the lines in the western group would be dealt a severe blow by the adoption of a policy either upon the part of the Government or the railroads, under which, in order to continue in traffic to the Pacific coast, the rates to the intermediate country must be leveled to those made to meet the conditions there obtaining. Neither horn of the dilemma, which would be presented by an absolute long and short haul clause, could be accepted by the rail lines without tremendous loss in net earnings and a great impairment of their efficiency and usefulness and of their ability to finance themselves for further improvements and to grow as they should grow in service and usefulness and facilities. They should not be asked to choose as between the two horns of the dilemma.

The result of such a policy in the long run would injure the public as much if not more than the railroads. It is the function of the railroad as well as of the steamer to carry the commerce of the country to market. Until the limit of its capacity is reached, every pound of freight that is handled by a railroad company at some profit over and above the actual cost of carriage makes possible a more frequent and more efficient service and adds to the net revenues out of which the plant may be maintained and operated with a greater usefulness, and, when the capacity of the plant has been reached, enables the carriers to finance the needed improvements and additional facilities which depend in the last analysis upon net earnings. To the extent that the ability of the carrier to enlarge its business is restricted, its present usefulness and its future possibilities are impaired. Under the protection afforded by the law through the administration of the commission, charged with the duty of preventing undue discrimination and with seeing that all rates are reasonable, carriers should be permitted to compete for all the business that they can get at some profit to themselves and to increase their traffic in every legitimate way possible, and thereby increase their usefulness as competitive agencies of transportation and as growing instrumentalities of commerce constantly increasing in efficiency and service.

PUBLIC POLICY.

It has been suggested that, aside from the merits of the controversy between the rail lines and their patrons, Congress should, as a matter of public policy, encourage the development of water transportation to such an extent that all articles which are susceptible of water carriage should be turned over to the water lines to the exclusion of the railroads. The question has been asked, What would the Government do if it owned both the railroads and the ocean carriers through the canal. Would it permit them to compete or would it turn over to the water lines everything which they could carry at a rate less than reasonable for rail transportation, even though its rail lines

might be able to carry a part of that traffic at some profit? I think the query should be approached and answered in this way:

A railroad is a permanent physical property which can not be moved about from place to place. The capacity of a steamship line is whatever its owner chooses to make it, and a part of its facilities or all of them may be employed in one business or another, as the owner may determine. Governmental ownership of the railroads and of a competing steamship line must contemplate either governmental monopoly or "freedom of the seas." If it be assumed that other steamships would be excluded from competition with the Government for the transcontinental traffic, the steamship rates to the coast cities might be maintained on a level with rates which had been found reasonable to the intermediate territory. Under these circumstances is it not unreasonable to suppose that the Government would maintain a fleet in this service of sufficient capacity to carry all of the coast traffic when a part of that traffic could be profitably handled by the railroad plant which it was maintaining? Is it not fair to assume that its railroad facilities would first be used to their capacity for the transportation of this tonnage, and that the number of steamships operated in this service would be limited to the capacity necessary to accommodate the tonnage which the Government railroads could not conveniently and profitably transport? Obviously the additional steamships owned by the Government would be employed in the export business or in some other traffic than that for which railroad facilities had been acquired and were being maintained. This would be the only business-like course to be adopted by the Government in its own interest, and the average cost of transportation per unit of all traffic would be minimized.

While such an arbitrary policy might give the intermountain communities an adjustment of rates no higher than applicable to the coast cities, it would unjustly deprive the coast cities of all of the benefit of their geographical location and of all of the advantage which would accrue to them under a private ownership of ocean carriers by depriving them of water rates as low as they would enjoy under private ownership. This would be such an unwarranted exercise of favoritism to the intermountain country at the expense of those whose location entitles them to the benefits of the sea as a regulator of transportation charges that in common fairness the policy of the Government would recognize "the freedom of the seas." Under these circumstances the rates by sea would be no higher than the privately owned steamships would make them, and a share of the traffic could not be retained, either by the governmentally owned ships or railroads, without making equivalent rates. If such equivalent rates could be made by its railroads and revenue derived therefrom in excess of the actual cost of handling this additional traffic, thereby contributing to the maintenance of the governmental railroad plant and to the reduction in the average cost per unit of all of the service of that railroad plant, is it to be supposed for a moment that to perform the same service the Government would create or expand another agency of transportation by the introduction or enlargement of a steamship fleet, which to justify its existence as a private enterprise would have to earn from this low-rated traffic not only the cost of transportation, but a full return upon the investment in the steam-

ship property, and which, as a governmental enterprise, would not even then be justified so long as the same traffic could be handled by the Government's railroads at a profit in excess of its actual cost of transportation, and the same steamships could be employed by the Government in profitable service elsewhere?

Useful as a merchant marine is, its use in coastwise service must be supplemental to the railroads in the industrial and commercial development of the country. The points which may be directly served by ocean-going vessels are comparatively few. The great resources of the country, from which its wealth is derived—its farms, its mines, its forests—are principally inland, and the producers must mainly depend upon rail transportation. Nothing should be done to cripple that rail transportation, whether the railroads and the merchant marine are both privately owned, or even if they were both publicly owned. At this particular time we are greatly impressed with the increasing burden upon the railroads and the desirability of employing to the fullest extent possible the use of water transportation to relieve that burden, but in times of peace, when the railroads are capable of handling the normal traffic, the chief employment of a merchant marine should be in the development of an export trade, and it is quite as useful in the domestic trade if by its competition the public receives the benefit of rates by rail equivalent to those which may be made by water. It is difficult to conceive how the public would be benefited by having the commerce between the coasts moved exclusively by water at water rates rather than to have a part of it moved by rail at the equivalent of water rates.

It is unfair to argue that all of the Pacific coast traffic should be permitted to move by sea because the railroads have all the business they can handle, for it is well known that the conditions existing to-day upon which this suggestion is based are extraordinary and are not a fair index of the past or the future. Substantially all such traffic as shipped by sea for half a century, whether via Cape Horn, the Straits of Magellan, the Panama Railroad, the Tehauntepec route, or the Panama Canal, is being handled by the railroads in consequence of the diversion of ships to other service. An enormous import and export tonnage is moving through Pacific coast ports which has been heretofore shipped by sea. An enormous volume of business in material for the shipyards, supplies for the Army and Navy of the United States and for its allies, to say nothing of the transportation of the troops themselves, has called for the maximum railroad transportation facilities and the performance of a service of which the American railroads may be justly proud.

For example, the Southern Pacific lines handled last year 14,803,-344,973 ton-miles of freight, while in the fiscal year ending June 30, 1915, during nine and one-half months of which the Panama Canal was open and active steamship competition existed, the same lines carried but 7,632,401,846 ton-miles. If the capacity of these lines be represented by the tonnage which they handled last year, it follows that only 51.5 per cent of their capacity was employed during the fiscal year ending June 30, 1915.

A chart which was introduced by Mr. Kruttschnitt in his recent testimony shows that during the year 1914 there were never less than 135,000 idle cars on all of the railways reporting to the Ameri-

can Railway Association, and that the number reached as high as 245,000.

These figures convincingly show that when normal sea competition existed and the volume of rail traffic was not stimulated by the war as it is to-day a very substantial part of the capacity of the Southern Pacific lines, and of the railroads of the country generally, was not utilized.

I have undertaken to show how the removal of this business from the rail lines would cripple their efficiency and usefulness and their ability to provide additional facilities by reason of the credit which their net earnings afford. The facilities of the transcontinental lines to-day are what they are because they have been provided in large measure for the transportation of through transcontinental traffic. It is inconceivable that those facilities, inadequate as they are to meet the extraordinary demands of the war, would be anything like as great as they are if the policy suggested of confining the enormous volume of transcontinental traffic to the ocean lines and excluding the rail lines from participation therein had been followed in the past.

The Southern Pacific Co. within the past year handled nearly double the number of ton-miles of freight that it handled in the fiscal year 1915 with the same plant. The backbone of the business of the Union Pacific Co. is its through transcontinental freight. To take care of this business it has been engaged for a number of years in double tracking its line between Omaha and Ogden, and the greater part of that work has been completed. What would its capacity have been if through all these years it had been limited to the handling of local traffic and the coast-to-coast business had all moved by water? And what, under such a policy, would be the condition of the public to-day? Those ships which previously operated in the coast-to-coast trade abandoned it for more lucrative business during the war. There is no reason to assume that they would not have acted similarly if they had handled all the business and the railroads had handled none, in which event this tremendous volume of transcontinental freight would have been thrown upon the railroads without facilities to handle it.

If those ocean lines had been owned by the Government, the temptation would have been strong to place them in a more lucrative service even before we entered the war, and the obligation to put them in such service after we entered the war would have been imperative. In the meantime, if the railroads (likewise assumed to have been owned by the Government) had been confined to their local traffic, it must be assumed that their facilities would have been commensurate only with the traffic which they were expected to handle; to have provided more would have been economic waste; and so, under the hypothesis, the exigencies of the present condition would have resulted in throwing upon the transcontinental railroads not only the added burden created by war conditions, for which they could hardly be expected to be prepared, but likewise the added burden of transcontinental traffic, for which they have always been prepared but for which, under those conditions, they would have been without preparation.

All this, of course, is upon the assumption that the transcontinental railroads would have been built under the conditions of enforced exclusion from through transcontinental traffic which is assumed in the question. The fact is that under such a condition they probably would not have been built at all. Certainly the main purpose of the construction and of the Government aid afforded them was to provide through rail routes for the carriage of transcontinental traffic. The Southern Pacific lines across Arizona and New Mexico and Nevada were built expressly for that purpose and otherwise would not have been constructed. The same is undoubtedly true of the old Atlantic & Pacific Railroad, which forms a portion of the lines of the Santa Fe west of Albuquerque, N. Mex. There would, of course, have been railroad development without the construction of these three transcontinental lines, but the development and construction would have been quite different if those engaged therein had been informed that they could not participate in through transcontinental traffic. The service that the transcontinental group of carriers is performing now is a tribute to the wisdom of Congress in encouraging their construction and aiding in it and to the vision and courage of those who undertook the task. If throughout the 50 years that have followed the Government, either through ownership or control, had adopted the policy of forcing all of the transcontinental freight to move by water and had limited the operations of the transcontinental railroads to traffic noncompetitive with the ocean lines, the plants of these companies would be far different from what they are to-day. Certainly the requirements of the present national crisis demonstrate the necessity of transcontinental lines capable of handling at least as much business as they are now handling, if not of handling more.

In addition to the greater service which vessels can render in other directions, this country could never safely rely upon ocean transportation through the canal for its service between the coasts in time of War. Water transportation on the high seas is beset with too many dangers and the Panama Canal itself is too vulnerable to attack. If our transportation system is to be maintained in anything like a state of reasonable preparedness, the capacity of the transcontinental lines must be so maintained as to be able to handle all of the transcontinental traffic in time of peace and something more.

Let us apply this question to the conditions of the past. If we assume that the capacity of these lines had been limited in the past to that required by local traffic and traffic other than that competitive with the sea, then we assume at once a plant less adequate to meet the exigencies of the present crisis than that now in existence. Upon the basis of this assumption the governmental policy suggested would therefore have been clearly unwise. If we assume then, as we must, that the policy suggested should have been accompanied by the maintenance of railroad facilities at least as extensive as those which exist to-day, it is clear that it would have been an economic waste to have constructed and maintained these facilities for all these years and not to have allowed them to carry a portion of the traffic between the coasts. The carrying charges, the maintenance charges, and the most of administration of the assumed governmental railroad depends largely upon the size of the plant and very little upon the volume of business handled. Failure to utilize the plant so provided,

therefore, to its maximum capacity would have increased greatly the cost to the Government and to the public of the remaining transportation service which it did provide, while the construction and operation of ships of sufficient capacity to handle this business which the Government railroads could have handled, would have been an unnecessary duplication of transportation facilities and an economic waste. Whatever rates the Government might have charged either by ocean or by rail under the conditions assumed, it is apparent that national preparedness and economic wisdom would have united in the development of the full possibilities of rail transportation between the coasts.

In some of the bills which have been recently introduced, notably H. R. 9928, it is observed that the language of the provision against charging more than combination of locals omits the words "subject to the provisions of this act." That is to say, this provision of the fourth section now reads "or to charge any greater compensation as a through route than the aggregate of the intermediate rates, subject to the provisions of this act," while H. R. 9928 reads "or to charge any greater compensation as a through rate than the aggregate of the intermediate rates for passengers or freight."

The effect of this change would be to facilitate the making of or disturbance of interstate rates by State commissions. In other words, the change would prohibit charging more than a combination of two intrastate rates or of an interstate rate and an intrastate rate, notwithstanding that a higher through interstate rate may have been found reasonable and established by the Interstate Commerce Commission.

It is important that the words "subject to the provisions of this act" should remain in the law.

CONCLUSION.

In conclusion I desire to emphasize these statements:

First. The intermountain communities do enjoy rates which are not more than just and reasonable, and the law requires the Interstate Commerce Commission to see that they continue to enjoy just and reasonable rates.

Second. Under the recent order of the Interstate Commerce Commission there are no higher rates applicable to intermountain cities than to the Pacific coast.

Third. When steamship service is actively resumed undue preference or unjust discrimination will not be created by rail rates to Pacific coast cities which are no lower than the equivalent of rates available to those cities by the ocean routes, because the same rates will be available to the coast cities whether the railroads meet them or not.

While it may be a matter of speculation what the policy of the Government would have been under such conditions or what it would be if these conditions were created for the future, it is respectfully suggested that if the railroads and the steamships were both governmentally owned and the adjustment of rates to the Pacific coast were to be made by the Government in accordance with sound principles of political economy the Government-made adjustment would

have been the same as heretofore maintained by the railroads, namely, lower rates to the Pacific coast in recognition of the lower cost of water carriage irrespective of the proportion actually moving by water or by rail and rates to the intermediate country fully reasonable, and hence higher than to the coast. If, ignoring true economic principles, the Government, actuated by political reasons, should determine to maintain rates to the intermountain country upon a basis as low as those to the coast by reducing the rates to the interior to the level of those which were established at the coast in recognition of the lower cost of transportation by water, it is not to be assumed that the Government would create any discrimination against points farther east in favor of the intermountain points, consequently these reductions would necessarily affect the entire scale of rates across the continent and might result in operating the governmentally owned transcontinental system at a loss. In any event, it would have the effect of making the rest of the country pay in some form for a rate at the interior lower than it could get under proper economic principles, either under private or public operation of rail and steamship lines.

Fourth. While the commission is authorized by other sections of the law to prescribe just and reasonable rates and to correct undue preference or unjust discrimination, the present fourth section enables the commission to prevent the creation of undue preference or unjust discrimination, and the carriers are left no discretion whatever.

Fifth. Neither the intermountain country nor any other section of the country would be benefited by an inflexible long-and-short-haul inhibition.

Sixth. The railroads would be unjustly handicapped and penalized and their revenues would be seriously impaired if unable to meet competition when in the judgment of the Interstate Commerce Commission they might make the rates necessary to do so without injustice to any community and earn revenue in excess of the actual cost of handling of such additional traffic as a contribution to their aggregate expenses and return upon the value of their property.

Seventh. The interests of the whole country, not excepting the intermountain country, are best served by sufficient flexibility of the long-and-short-haul provision to permit such exceptions as will give the public the benefit of the service and facilities of two or more lines between two given points by enabling the longer line to meet the rates of the shorter line; as will give the producers in one section of the country an opportunity to meet the competition of producers in another section of the country in common markets, with corresponding benefit to the consumers in those markets; and as will enable the railroads to earn a part of their revenue upon traffic that will otherwise be diverted entirely to the sea—so long as the Interstate Commerce Commission in every case, and the carrier in no case, will determine the justice and propriety of such exceptions. Those who advocate an inflexible long-and-short-haul statute do not realize what the results of such an inhibition would be.

Finally, the existing fourth section, which leaves no discretion whatever to the carriers and delegates to the Interstate Commerce Commission the same kind of administrative authority as the other

provisions of the statute, affords adequate protection to the interests of every community. Therefore, an amendment is unnecessary for the protection of any community, would impose unnecessary restrictions upon competition between carriers and between markets to the prejudice of producers, consumers, and carriers, and is absolutely unwarranted by any proof or argument which has been submitted to this committee.

The CHAIRMAN. We will take a recess until 2 o'clock, at which time the members of the committee will wish to interrogate you, Mr. Spence.

(The committee thereupon took a recess until 2 o'clock p. m., this day.)

AFTER RECESS.

STATEMENT OF MR. LEWIS J. SPENCE—Continued.

The CHAIRMAN. The committee will come to order. Mr. Spence, you represent, as I understood from your opening statement, all the transcontinental lines?

Mr. SPENCE. Yes, sir.

The CHAIRMAN. Well, now, as none of these lines seem to be from ocean to ocean, will you name what you intend by "transcontinental" lines?

Mr. SPENCE. What I mean by transcontinental lines?

The CHAIRMAN. Those which you represent.

Mr. SPENCE. They are those which terminate on the Pacific coast, broadly speaking. Of course, the Southern Pacific is one, the Northern Pacific, the Great Northern, the Chicago, Milwaukee & St. Paul, the Oregon-Washington Railroad & Navigation Co., the Union Pacific system, the Santa Fe, the Salt Lake Road, and the Western Pacific.

The CHAIRMAN. The Union Pacific starts west of the Missouri River and stops, I believe, at Ogden, does it not?

Mr. SPENCE. It goes to Portland.

The CHAIRMAN. On its own rails?

Mr. SPENCE. Yes.

The CHAIRMAN. Those are the lines, then, that we are to think of when we speak of "transcontinental" lines?

Mr. SPENCE. Yes, sir.

The CHAIRMAN. Then there are other lines connected with those lines.

Mr. SPENCE. Yes; which form lines from Chicago west to the Pacific coast.

The CHAIRMAN. And also to the Atlantic.

Mr. SPENCE. Yes; a different group of lines, however.

The CHAIRMAN. In other words, they carry through shipment from coast to coast?

Mr. SPENCE. Yes.

The CHAIRMAN. Mr. Spence, what did you understand, as a railroad man, from our amendment to the fourth section back in 1910—what did you understand by the language we used there "special cases"?

Mr. SPENCE. I should understand, in view of what had existed before, that Congress first sought to transfer from the carriers to an administrative body all of the discretion to create any deviation from the fourth section. The character of special cases, I should say, were cases that were created by some other force than that of the carriers themselves by whom the relief was sought; in other words, conditions that were beyond the control of the carriers who applied for relief.

The CHAIRMAN. Prior to that amendment the language had described the railroads that might have such rates substantially the same. I do not remember the exact language, but Congress evidently believed, or it would not have enacted the amendment, that as the railroads had applied the law before—and as they had been sustained in doing so—that they wanted to relieve the situation that that brought about, and therefore I understood that that language—special cases—meant something more than the conditions that had authorized them to make such a charge before that time; conditions that were special in the sense that they differed from the conditions that authorized such a discriminating rate—if we should call it discriminating—prior to that time.

Mr. ESCH. The former language was “under substantially similar circumstances and conditions.” Those were the words stricken out.

The CHAIRMAN. That in the through shipments that they made they should not charge more for a longer than for a shorter haul, if the conditions were substantially the same. Now, what I am trying to find out, Mr. Spence, is this, whether or not under the present interpretation of the amendment there has been any real or substantial difference between the way the railroads are operated or base the charge before and what they do now.

Mr. SPENCE. A very radical difference, Judge. It seemed to me that the conception of Congress in passing this amendment was that the latitude given to the carriers prior to that had been abused, and that Congress was no longer willing that that latitude should be exercised by the carriers themselves, and therefore delegated this authority to the commission to determine what were special cases.

The CHAIRMAN. Now, then, you mean to admit that they had been abused?

Mr. SPENCE. I said that was the conception of Congress.

The CHAIRMAN. But what were the facts?

Mr. SPENCE. Well, I think it was a fact.

The CHAIRMAN. Then I want to ask you one other question. Under the effect that it had upon the country generally, and especially the intermountain country—as that seems to be emphasized—the way it had been practiced before by the railroads was not in the public interest?

Mr. SPENCE. No; I think the abuse grew out of these conditions: That every railroad competing for that traffic had the same individual latitude. Each of them determined for himself when sea competition was of such force as to justify a rate being made against it. That created an active effort between each of these railroads, each outdoing the other in making a rate to the Pacific coast, predicated on water competition, which it believed it should meet. In other words, it created a competition between those carriers for the creation of those rates.

The CHAIRMAN. Was that competition at the point of contact at the port that you referred to, or was it the charge that they made to the intermediate point an abuse? In which did they abuse the authority?

Mr. SPENCE. In competition at the ports. What I mean to say is that this process of each railroad determining for itself when the proper time had arrived, when the volume of the commodity going by sea was sufficient to warrant its meeting the competition, each railroad exercised that privilege according to its own judgment, and one officer might decide to do that to-day because he apprehended that if he did not the other railroad alongside of him might do it ahead of him.

The CHAIRMAN. Prior to this amendment of 1910 did the railroads as a matter of practice—or any of them—make rates competing with the water rate to ports on the Pacific coast, or anywhere else, that did not give them a profit over and above the outlay of money necessary to do the business?

Mr. SPENCE. No.

The CHAIRMAN. They then always did make a charge that would pay all expenses and some net profit to the railroad companies?

Mr. SPENCE. Yes, sir.

The CHAIRMAN. Then, there was no substantial difference, so far as that was concerned, in what they did then and what they do now, or have tried to do since?

Mr. SPENCE. No, sir.

The CHAIRMAN. Well, as far as my recollection goes in considering the matter before the committee, the question of competing carriers, so far as port charges were concerned, was not involved, was not discussed, all the time that these intermediate people that seemed to need the protection which they sought by the amendment of the act.

Mr. SPENCE. Yes; but the complaint of the intermediate people was that the carriers were making rates to the port that were unnecessary and were not warranted by sea competition.

The CHAIRMAN. They were contending that they were making rates to the ports that were such—especially on freight going right through their own city to the ports several hundred miles beyond—which they might have just cause to think were a discrimination against them and prevented their development. In other words, they made just the complaint then that they are making now so far as the basic complaint was concerned.

Mr. SPENCE. Yes; but their complaint then was against the practice of the railroads. To-day it is against the administration of the commission.

The CHAIRMAN. Yes; in other words, it has been held that the Interstate Commerce Commission should not grant those rates.

Mr. SPENCE. Yes.

The CHAIRMAN. But when the law was first passed it was generally thought that the Interstate Commerce Commission had the rate-making power, but the courts finally held that they did not; that Congress did not vest the commission with that power when it first passed the law.

Now, I do not look at this question from the standpoint of a single city, either the port or the interior city, or from the standpoint of

the single railroad or single ship line. I want to look at it from the standpoint of broad policy, as to what is best for the entire country, what is best for each part of the country and every part of the country, and I should think that what is best for each part of the country would be best for the country as a whole. Now, these interior people, especially in the mountain belt, complain that this policy of allowing discriminating rates against them, are compelling them to pay higher rates than people pay who live at the ports, with several hundred miles farther haul, is a policy that is preventing the development of a vast area of the country.

Now, then, which policy is best, the one that improves and maintains and develops a vast area of country or one that permits certain sections of the country already developed to have a market which perhaps they could not otherwise have, and that has been brought about by the railroads adopting such a policy as prevents them from earning what they are justly entitled to earn? Now, your position before the committee, if I understood it, is that the change of policy which these intermountain people think would be to their interest would really be an injury to them; that if you are deprived of what you do make out of the port-to-port business, it would force you to charge higher rates and put a heavier tribute upon the intermediate points than you would otherwise have to do. You may be right, but that involves this question: That all the people of these interior States, their representatives in the Senate and in the House of Representatives and on the railroad commissions and in the legislatures, and their business organizations do not know what is best for them; and therefore the theory of self-government is a failure so far as they are concerned. That may or may not be true; I do not know. But it certainly does involve that question, that if the railroads and the cities who get the benefit of this discrimination; if it is best for them, and they know better what is good for the intermediate people than the intermediate people do for themselves, it certainly involves the question that the intermediate people are incapable of self-government in so far as what is the best policy for them. Now, doesn't that involve a pretty strong assumption on the part of Congress?

MR. SPENCE. Congress frequently undertakes to determine what is the best policy for people who think they know better themselves what it is, as, for example, the liquor question.

THE CHAIRMAN. Well, the liquor question—I never did understand that the liquor people were proposing to improve the morals of the country, and claiming that their method of doing so was to be preferred and that they knew better than the other people.

MR. SPENCE. No; but the man who takes a drink doesn't believe that a dry law is to his interest. Somebody has to tell him what is to his interest.

THE CHAIRMAN. But he is not the whole country. I am speaking about the whole country.

MR. SPENCE. But when we are speaking about the intermountain country we are speaking about a very great minority of the country. This complaint is confined to the intermountain country so far as I know.

THE CHAIRMAN. So far as territory is concerned, it is a large part of the United States.

Now, looking at it as representatives of the whole country, should we not try to provide a policy—it may have exceptions and hardships—that will be best for the whole country? Now, I want to know if requiring that the railroad, passing through these inland cities to the sea coast charge as little as they voluntarily could, or did before the canal was built, and no more, although the haul should be made several hundred miles farther, when it does not prevent the sea coast cities from having all the advantage that water transportation development gives them, charging these intermediate points no more than you do the sea ports, and the sea ports therefore do not have to pay any more themselves and have all the benefits of water competition or water transportation; I can not see why, in an academic way—I can not see how that can work out any other way than to the best interests of the whole country.

MR. SPENCE. The rate adjustment is not made in the interest of the sea-port cities. The sea-port cities at the outset enjoyed a sea competition. They obtained these rates in spite of the railroads. The railroads either had to choose between taking part of that traffic at rates which the sea creates, or not taking any of it. Now, if they choose not to take it at all, if they should be prevented from taking it at all because they could not afford to apply these rates all the way across the country, the intermountain country is no better off. It would be in exactly the same position it is to-day, because the sea-coast cities have the rates by sea, and the intermountain country still pays higher rates. They have no claim to lower rates.

THE CHAIRMAN. Now, supposing that a railroad, a transcontinental railroad's carrying capacity, including the freight that it carries for the water terminals and also for the interior—about what is the relative percentage of the freight you carry at a less rate than you give the interior cities—these transcontinental lines?

MR. SPENCE. Well, there are 135 commodity items to-day out of, I suppose, 1,200. I say to-day. There are none to-day, you understand. This last order of the commission withdrew all relief, but prior to that there were 135, or what we call schedule C, commodities on which special relief was granted. I presume 15 or 20 per cent of the commodity rates were lower to the coast than to the interior.

THE CHAIRMAN. Then there is 15 to 20 per cent of your through business which, if you were not permitted to make a lower or through rate, you would lose, that you would not get?

MR. SPENCE. The business which on the one hand is destined to Pacific ports and the ports that are adjacent to the Pacific, that are subject to competition, represents something like 3,000,000 tons a year from east of the Missouri River. The business to the territory that would be affected, in which the rates would have to be reduced if we had to observe the Pacific coast rates as a maximum, amounts to about 3,000,000 tons a year.

THE CHAIRMAN. You mean then there would be 6,000,000 tons—

MR. SPENCE (interposing). There would be 6,000,000 tons on which we would be compelled to make reduced rates if in order to meet sea competition to the coast we were compelled to apply the rates at intermediates.

THE CHAIRMAN. What is the whole tonnage?

MR. SPENCE. From where?

The CHAIRMAN. I mean that the railroads carry, these transcontinental lines?

Mr. SPENCE. I can not answer that.

The CHAIRMAN. Then are the 6,000,000 tons supposed to be 15 or 20 per cent of your entire tonnage?

Mr. SPENCE. No; I was dealing with the transcontinental rates. I thought you were asking of this transcontinental business.

The CHAIRMAN. No; I want to know what the revenues are, what it amounts to to the railroads—this business that they wish to take or must take at a lower rate than they allow the intermediates in order to get it.

Mr. SPENCE. I could not answer what it amounts to to the railroads in dollars. In volume it represents about 3,000,000 tons.

The CHAIRMAN. I mean the percentage of the business.

Mr. SPENCE. I don't know what the total business of all the transcontinental roads is.

The CHAIRMAN. I supposed you would know that, in the position you hold.

Mr. SPENCE. It is all a matter of record, of course.

The CHAIRMAN. Well, I supposed you had looked it up. I don't mean for you to be absolutely mathematically correct. I want to see how bad the roads would be hurt, to what extent they would be hurt with their present volume of business by being forced to abandon the business entirely and not take any of it.

A VOICE. Mr. Chairman, if I may be permitted, I have the figures for 1916. The Southern Pacific handled 25,904,486 tons of revenue freight in that year.

The CHAIRMAN. You do not know how much of it, though, was the kind that would compete in water transportation?

A VOICE. That was the total tonnage carried, and I thought that Mr. Spence possibly could give you the amount of water competition.

The CHAIRMAN. Now, how much of that 25,000,000 tons of business would you lose provided the long and short haul was made rigid?

Mr. SPENCE. I don't know. I have never undertaken to make that kind of an analysis, Mr. Chairman, because every ton that you lose, every thousand tons that you lose, is an absolute loss of all the revenue in excess of the out-of-pocket cost of handling that freight, and that total revenue must be compensated from somewhere, if it is only \$500 or if it is a million dollars.

The CHAIRMAN. How much do you get on that kind of business over and above the out-of-pocket cost?

Mr. SPENCE. It depends on the different commodities.

The CHAIRMAN. Haven't you an idea of the per centage?

Mr. SPENCE. No; it differs in the measure of sea competition on every article. There is a wide difference between the out-of-pocket cost and the rate on one commodity and on another. It differs on every commodity.

The CHAIRMAN. I supposed you had figured it up and knew something about it. It has been a matter of contention so long that I would like to know something about what your real losses are or would be provided this bill should pass, or some similar measure—what the net losses to the railroad are.

Mr. SPENCE. We have never made a calculation of that sort. The railroads have never made one, to my knowledge, for the very reason

that I have stated, that we believe that as long as we do not make any rate that is not made by somebody else who would take the tonnage instead of our taking it, we are doing the intermediate country no injustice, we are not creating any new conditions. We do not want to lose a million or five millions or ten millions; no matter what it is, it is loss that has to be made up from other traffic.

The CHAIRMAN. You want to carry all the tonnage you carry profitably. You don't want to carry any that you do carry at a loss. Now, having figured what your out-of-pocket cost is, I suppose you had figured what your profit was.

Mr. SPENCE. Your out-of-pocket cost differs on every carload of freight, based on the character of the commodity. Now, when you make an application to the commission they require you to show what on that particular commodity your out-of-pocket cost is. If it is an 80,000-pound car, it is one thing; if it is a 60,000-pound car, it is another thing; and if it is a commodity that loads only 40,000 pounds, it is another thing.

The CHAIRMAN. Now, I will ask you a question on that line: If you could not take that traffic from the ports and make something over your out-of-pocket cost, would it not stimulate every trans-continental railroad and every branch of it to do all it possibly could to increase the output of the industries of the intermediate territory?

Mr. SPENCE. The industries of the intermediate territory are not suffering.

The CHAIRMAN. I am not talking about whether they are suffering or not. They may be very prosperous; but suppose an intermediate town needed a thousand tons of freight, and you are going to lose a lot of transcontinental business on account of the water competition, wouldn't every railroad having to depend more upon intermediate freight than it did before immediately begin a campaign to stimulate the production of intermediate places?

Mr. SPENCE. We do that. We do all we can to stimulate the production of intermediate places. This is a jobbers' question, a question of rates to intermediate destinations. It is a question between jobbers entirely.

The CHAIRMAN. Now, doesn't it stand to reason that it is good policy, better business, to carry as much freight as possible that is based upon reasonable charges, reasonable freight rates, than to carry as much as possible that is subnormal, barely over the out-of-pocket cost?

Mr. SPENCE. Beyond any question; yes, sir.

The CHAIRMAN. But it seems now that the railroads as represented by yourself are more anxious to take a part of the water-borne commerce from the water carriers than to increase the business of the intermediates where there is no water competition.

Mr. SPENCE. If we knew how to increase the business of the intermediates so that we could afford to do it, the policy would have been adopted years ago.

The CHAIRMAN. The intermediates tell us now before this committee that if this long-and-short-haul clause is made rigid there would be new and vast industrial development in their country by reason of new capital being invested and the creation of new busi-

ness, new traffic, for the railroads. Now, that is what they tell us—if they could know that they were not going to be discriminated against by freight rates to the port of terminal.

Mr. SPENCE. I don't see how they could be, if the railroad rates were the same as they are to-day—they could not be less—and the sea rates were the same as they are to-day or have been to the coast. They would have the same relative position to the intermediate as they have to-day.

The CHAIRMAN. I am only falling back on the statement that the gentlemen in those States tell us it would be otherwise; that the intermediate business that the railroads would get would be vastly increased, provided stable rates were adopted. They are not asking for a rate any lower; they are not asking for a mileage basis rate, as I understand, but they are asking that they get their through rate from the eastern ports the same as is given to the port cities. Now, I was trying to find out, if I possibly could, how much the transcontinental railroads will lose on water-borne commerce that they can not take at all provided this bill should be passed.

Mr. SPENCE. My point is, Mr. Chairman, that if the intermountain countries have the same rate as the rates to the terminal—as you say they do not ask for any lower rate; they ask for whatever that rate to the terminal is going to be—the rates to the terminals would not carry the traffic. Those are not the rates with which they would be in competition. It is not the railroad rates that they are in competition with; they would be in competition with the rates by sea to San Francisco, and the jobber at San Francisco would have his natural geographical advantage as a result of sea competition. Now let us assume that the railroads do not meet competition at all—

The CHAIRMAN (interposing). Well, I want to see if I can not find out from you what percentage of the traffic carried would be affected by water transportation.

Mr. SPENCE. I can not tell you, except that the canal carried in the year it was opened a million tons westbound.

The CHAIRMAN. But you do not mean, of course, that the railroads would have carried all that if the canal had not made a lower charge?

Mr. SPENCE. No.

The CHAIRMAN. Now the railroads figured ton-mile earnings, car-mile earnings. Now the more tonnage you carry at the charge of out-of-pocket cost, the lower the entire tonnage rate will be for your railroad, will it not?

Mr. SPENCE. Yes; but we do not carry any traffic at just out-of-pocket cost.

The CHAIRMAN. But you are unable to tell how much over out-of-pocket cost it is.

Mr. SPENCE. We are required by the commission to tell that before we get relief.

The CHAIRMAN. But you do not give me any figures, whether it is 5 per cent or 10 per cent or 20 per cent.

Mr. SPENCE. It isn't any per cent. It differs with every car loading—every different commodity.

The CHAIRMAN. But you don't give us the average; you don't give us any idea at all.

Mr. SPENCE. I don't know, because we are required by the commission to deal with every commodity on its merits.

The CHAIRMAN. But as a matter of fact the more you carry at a subnormal rate, the lower ton-mile rate all your traffic must bear.

Mr. SPENCE. Of course it reduces the average ton-mile rate.

The CHAIRMAN. In other words, you are just simply making expenses on a portion of your business.

Mr. SPENCE. Oh, no.

The CHAIRMAN. Well, it is practically that way.

Mr. SPENCE. We must make more than expenses, or we would not be authorized to make the rates—

The CHAIRMAN (interposing). But you make so little above that you can not tell what it is.

Mr. SPENCE. I don't know what it is in millions of dollars or in percentage.

The CHAIRMAN. You don't know in percentage or gross, and I should think you ought to have some idea.

Mr. SPENCE. It may be \$1 a ton; it may be \$2 a ton; it may be \$5 a ton, depending upon the commodity and the carload.

The CHAIRMAN. As one member of the committee—and I presume the rest of us are the same—we don't know anything about it, any of us; but you are here as an expert witness representing all the trans-continental lines, and you can not even give us an idea of the percentage of difference, so we are left to guess again.

Now, Mr. Spence, the rates that pay of course are those that not only make out-of-pocket expenses but that render a profit after all expenses are paid, interest and everything of that sort, and dividends. The rates that pay are those that pay all that. Now the railroad that has the greatest volume of business at normal rates, reasonable rates, and the smallest volume of business below them is certainly the railroad that is making the most money per car-mile or ton-mile, is it not?

Mr. SPENCE. Yes; that shows the fallacy of the ton-mile calculation.

The CHAIRMAN. I always thought it was a fallacy. I agree with you exactly that it is very misleading and deceiving. Now, we have been taught here for years—some of us were here a long time before that—that the opening of the Panama Canal would be of the greatest possible commercial advantage to the two coasts, the Pacific and the Atlantic, and to the whole people, as well as the possible military and naval advantage. Now, how can the canal be of any very great advantage if it does not carry the business that normal economic conditions would require it should carry?

Mr. SPENCE. It performs the same service as a rate regulator, if you will allow the expression.

The CHAIRMAN. It performs this service—I mean the result has been this: That instead of doing business to capacity we permit the railroads to make a rate that takes it away from the canal and prevents it from going where it otherwise would go and doing a vast amount of business, and not upon a normal rate at all but upon an artificial basis which increases the per ton-mile cost and car-mile cost, and increases the expenses of the carrier that does it out of proportion to earnings. Now, is that a good policy for a whole country to adopt and maintain indefinitely?

Mr. SPENCE. It would not be if that was a correct understanding, but it is not a correct understanding. When you realize that you do not carry a ton or a car of that freight without a profit, then you realize that on every car and every ton you do not carry you lose that profit on, your whole income is reduced accordingly, and it must be made up elsewhere.

The CHAIRMAN. Well, do you think our whole carrier system would be worth the paper it is written on if they had to make all their money that way, just barely out-of-pocket cost?

Mr. SPENCE. No, sir.

The CHAIRMAN. The more business of that sort you do, the less able you are to reduce your rates on the general volume of business.

Mr. SPENCE. No, sir; quite the contrary. The more business of that character they do, the more profit they make on business that would go by other routes, and the less they have to charge other traffic.

The CHAIRMAN. Suppose you had 50 per cent of your business that kind of business, what shape would you be in?

Mr. SPENCE. I would not want to have 50 per cent of that kind of business.

The CHAIRMAN. Then there is a limit to it. It is injurious to have too much of it.

Mr. SPENCE. It would be injurious in the sense that your other rates would have to be still higher if you were compelled to meet competition on 50 per cent of your business that only yielded \$1 a ton profit. Of course the other rates would have to be higher.

The CHAIRMAN. And that is destructive competition?

Mr. SPENCE. But we do not create it.

The CHAIRMAN. I know you don't, but you are here now making a strong fight that this destructive competition is a help to the Pacific ports, is also a help to the intermediates, and a help to the railroads.

Mr. SPENCE. I haven't said that it was a help to the Pacific ports.

The CHAIRMAN. Well, the Pacific coast people think it helps them.

Mr. SPENCE. I don't know what views they have expressed on that subject, but I would be vitally interested in this question from another standpoint if I was representing a Pacific port. The Pacific ports are dependent on the vitality of these railroads to serve them in an enormous territory where they have no sea competition, and they are vitally interested in seeing that these railroads are preserved and receive revenue enough to keep them alive.

The CHAIRMAN. You mean by that, that if they get the benefit of the sea rates they can afford to see the railroad rates raised that much farther out in the interior?

Mr. SPENCE. No; I mean the enormous traffic. Just take the products of the Pacific coast, and in the main those products are not susceptible to sea competition. They depend on the railroads to take those products to market. They depend on efficient railroad facilities, and they are vitally interested in having them preserved.

The CHAIRMAN. The way to have efficient railroad service is to have good operating returns, is it not?

Mr. SPENCE. Yes, sir; and the way to have good operating returns is to carry every ton of freight you can by having the plant efficiently

maintained. The overhead expense is running all the time; the interest on the investment, on the capital investment, is running all the time, and the way to make money with that railroad is to use the plant to maximum capacity, if you only earn \$1 a ton on part of that freight above the cost of handling it.

The CHAIRMAN. But what I don't understand is why you do not think that as the rest of your territory which is not within this area of destructive competition is developed you will not get the benefit of that development by getting normal rates.

Mr. SPENCE. There is no question of the development of that territory involved. We do develop it. As I have pointed out here, we make rates on the products of those territories that take them to market and put them into the widest areas of markets. That is what those communities are interested in.

The CHAIRMAN. I suppose it is correct that your road alone hauled 25,000,000 tons of freight in the one year given?

Mr. SPENCE. Yes.

The CHAIRMAN. And in that year you give, the Panama Canal traffic was only 1,000,000 east and 1,000,000 west. That of itself would not materially hurt your railroad if you lost it all, would it?

Mr. SPENCE. Yes, sir.

The CHAIRMAN. Now, about what per cent of that 1,000,000 or 2,000,000 tons had any effect directly or indirectly upon your road or the business of your road?

Mr. SPENCE. Every dollar. If we earned \$5 a ton profit on that million tons—

The CHAIRMAN (interposing). I am talking about what you got out of it. There was only a million, all of it, each way. Your railroad did not get all of it. Suppose your railroad got half of it—do you think your road lost half of it? I mean, did your road lose one-half of the million tons that went through the Panama Canal each way that otherwise would have gone on your railroad?

Mr. SPENCE. I don't know about our railroad. The transcontinental railroads lost it.

The CHAIRMAN. But that would only be a million tons for all of them. Now, if they all carried relatively as much as your road did as a whole, it amounts to upwards of more than 100,000,000 tons. That is not more than 1 per cent for all of them, provided they would have gotten it all.

Mr. SPENCE. We say it don't make any difference if it is \$10,000,000 or \$5,000,000. Here is a plant that is being maintained, and if that \$5,000,000 can be earned—or \$10,000,000 can be earned—by handling this additional traffic on a plant in which the investment is made, the overhead expenses are running; to the extent of that \$5,000,000 or \$10,000,000 we have derived revenue which will otherwise have to be derived from intermountain traffic or local traffic or some other traffic—it don't make any difference what it is.

The CHAIRMAN. Now, another question. Every ton of freight diverted from the Panama Canal is also taken from the receipts of the Panama Canal, is it not?

Mr. SPENCE. Obviously.

The CHAIRMAN. And the United States Government owns the canal and foots the bill of all its expenses?

Mr. SPENCE. Yes.

The CHAIRMAN. And so now you are here asking us not to pass any law that will protect the Government's carriers at your expense—or possible expense—and let the Government lose the receipts that it would get in a normal way; that is, the traffic that you bid for and get by taking it lower than you otherwise would, on account of the Panama Canal being there, and therefore diverted from the Panama Canal; and the Government of the United States, out of the pockets of the taxpayers has to make up for what it loses for your interest. Isn't that a fact?

Mr. SPENCE. They are both Government properties, you might say, the railroads and the canal to-day.

The CHAIRMAN. To speak of them in a general way.

Mr. SPENCE. I want to talk of what the Government would do under those circumstances. It seems to me it is perfectly obvious what it would do. We don't do anything but what the Government would do under those circumstances.

The CHAIRMAN. The question of constructing the Panama Canal has been under consideration for 50 years or longer, and we have put four hundred million and some odd dollars into that canal, and are charging an extremely small tonnage charge for going through the canal, and the Government to-day is losing money on it, and will for a long time; and yet our transcontinental railroads propose to carry freight from port to port at such a charge as will prevent it from going in the natural ordinary way through the Panama Canal, which was constructed out of the pockets of the taxpayers and will always be a charge upon the taxpayer until its receipts equal its expenses.

Mr. SPENCE. Well, that goes to the theory that all traffic that is susceptible of water competition should be allowed to move by water.

The CHAIRMAN. Isn't that the best theory for the whole country?

Mr. SPENCE. No.

The CHAIRMAN. You think, then, if we should divert water-borne traffic from its natural channel, where it can be moved profitably at a very low rate, to the railroads when they are willing to carry it at a mere out-of-pocket cost and a little more, it would be a good thing?

Mr. SPENCE. Enough more to be substantial, the commission says. The commission will not authorize them unless we make enough more to be substantial.

The CHAIRMAN. Then all this money we are spending to improve rivers and waterways is to be worth nothing, provided the railroads are willing to take the same traffic at a very small sum over and above the actual expense of operation?

Mr. SPENCE. No, sir; the proposition here is to take all of the facilities of the railroads into consideration, their free switching, and all of their facilities. And the commission will not authorize a rate that will have the effect you state. It will create a normal competition between rail and water for that traffic.

The CHAIRMAN. You have suggested something, Mr. Spence, that brings up something that I did not intend to bring up when we started. You spoke of free switching. The railroads do, as a matter of fact, a great deal of service without any charge to those who receive it. Isn't that a fact?

applies everywhere, and I am not in favor of paying money out of the pockets of the people by taxation to improve the rivers and to build canals, if the business that they are built to promote and stimulate is afterwards to be diverted to railroads that ought not to carry it.

Mr. SPENCE. Judge, I should say that in so far as this kind of competition we are discussing is concerned, that the railroads would be absolutely unconcerned as to whether they carried the traffic or not, so long as they were allowed a sufficient aggregate revenue for their corporate purposes. But we believe that this is a way of getting a contribution to that revenue that does relieve our intermountain friends, and also relieves the local traffic and every kind of traffic.

The CHAIRMAN. I wish I knew how much you got out of it. I would then know how to pass on it—whether it was a relief or not. It is true that if you got more than 1 per cent above the out-of-pocket cost, you would then be living within the law; but I can not see how it is possible to continue the operation of your railroads if the operation depends upon the small additional amount of revenue that you now receive upon such traffic as will not take a water-bound course anyway—I mean, that you can not divert. Some of it you can divert, and some of it you do not want to divert.

I wish to say, so far as your testimony is concerned, it has been one of the most illuminating statements on the subject that I have ever heard; but the broad policy—taking the view that I think the Nation as a nation ought to take, and every State as a part of that Nation—is that every State should have equal treatment by public utilities, and that each State is the better judge of what the welfare of that State requires than any other State; and, therefore, I feel inclined to the idea that there should not be any discrimination in the way it is practiced—that is, that you should charge more for a shorter than for a longer haul when the effect of that charge is to prevent the development of the State discriminated against, and not substantially increase the revenues of the carriers; and, at the same time, divert from a Government facility—the Panama Canal—millions of tons of freight that has to be sustained—the loss of that freight has to be sustained by public taxation, because when that canal does not pay operating expenses (which it does not now) every dollar taken from it and diverted to a railroad, which does not pay the railroad enough to be of any benefit to it, at the same time it puts a tax to that amount upon the taxpayers of the United States who have neither used the railroad nor the canal. Now, that is the policy you are advocating.

Mr. SPENCE. Well, I think, that that policy that you outline, would make the beneficiaries of the canal the coast cities.

The CHAIRMAN. Not solely.

Mr. SPENCE. Well, within a short distance from the coast.

The CHAIRMAN. If there wasn't any canal you would charge the coast cities a higher rate than you do. You had to reduce your rates after the canal was established.

Mr. SPENCE. Yes; if there wasn't any canal we wouldn't have this intermountain trouble at all.

The CHAIRMAN. Now, the canal comes and gives these cities a lower rate than they otherwise were getting; and, if these intermedi-

ate cities did not pay a higher rate, so far as they are concerned, that would be all right.

Mr. SPENCE. They are all right, but I insist that the intermountain country is no better off as a result of the railroads having retired from that traffic.

The CHAIRMAN. Well, but you see they differ with you about that.

Mr. SPENCE. I don't know whether they do or not, if they analyze it.

The CHAIRMAN. They say they do. They are here asking us to pass this bill, with great earnestness, and have been maintaining this identical position for a number of years.

Mr. SPENCE. That point is so clear to me that I do not know why they do not understand it.

The CHAIRMAN. Well, I think that with the clear mountain air and sunshine out there that is 100 per cent pure, that they ought to be in good health and their mental powers ought to be as good as those of anyone else.

Mr. SPENCE. The development of those countries is not retarded any more by the railroads carrying part of that traffic through them to San Francisco or Seattle that would otherwise be carried by sea, than if it all went by sea.

The CHAIRMAN. And you do not think the railroad would try any harder to develop that country nor to increase their traffic if they were not permitted to take this little bit that they get out of the discriminating charge?

Mr. SPENCE. That would have to be by reduction of rates. I don't see what a railroad could do to force development in a desert country, even by reduction of rates.

The CHAIRMAN. They have different ways of influencing it. You made a very forcible statement, creditable to the Interstate Commerce Commission this morning, and I join you in that position. I think you are exactly right about it. That is an expert study. They give their whole time to the study of transportation problems, yet the railroads have not been willing to trust their cases with this expert body, and have resorted to influencing public sentiment by publishing magazine articles, newspaper articles; by even putting in display advertisements to the effect that they need an increase in rates above what the Interstate Commerce Commission has ever been willing to give them. They are willing to trust the expert body usually, except where it cuts into their own interests, and then they resort to every means—and legitimately; I do not mean improper means—to influence public opinion. They did so in the 5 per cent rate case and every case they ever had up that I know anything about in recent years. I mean where it was a large movement. They published in the newspapers, had addresses delivered by experts over the country, employed committees to look after these things, and tried to bring pressure to bear upon the Interstate Commerce Commission from a lay source, from an uninformed, unexpert source; and I have heard the commission severely criticized on the floor of this House, resulting from just such campaign of so-called "education."

Mr. SPENCE. The public opinion which the carriers have sought to influence, Judge, has been the opinion of the people who paid the freight.

The CHAIRMAN. That they wanted to pay more freight?

Mr. SPENCE. Yes; they were willing to pay more freight. They recognized the needs of the carriers throughout this country.

The CHAIRMAN. So far as I have been able to get hold of it, I thought the freight payers were opposed to those things.

Mr. SPENCE. I know the records of the commission will not show that.

The CHAIRMAN. But you do think it is bad policy to spend money in improvement of waterways simply to force the railroads to take traffic at subnormal rates?

Mr. SPENCE. I do not think it is bad policy to improve waterways.

The CHAIRMAN. I know; but when the purpose is simply to reduce the charges of the railroads to water-competing points only.

Mr. SPENCE. Well, that is certainly the effect, whatever the purpose is.

The CHAIRMAN. And so therefore it is more economical for the country to do its transportation business through the economically most expensive agents, if we are going to build up the waterways of the country, not to carry traffic but to force the railroads to carry it at a lower rate than if they were not built up, the rivers not returning any return, not being used to the extent of that freight traffic, and the railroads having to charge less on a portion of the business than they otherwise would charge, and higher on another portion than they otherwise would charge?

Mr. SPENCE. No; not the latter. They would charge less on the other portion than they otherwise would by reason of being able to take the sea traffic.

The CHAIRMAN. Did you ever know a railroad to reduce its rates to intermediate cities because there was water competition at the end of the route?

Mr. SPENCE. The Interstate Commerce Commission has done it for us. They have made it a condition of enabling us to meet these terminal rates that we should reduce the intermountain rates.

The CHAIRMAN. You are speaking about intermountain rates. Take it between Memphis and New Orleans on the Mississippi River. There is a waterway. Now, I never knew the Illinois Central to reduce its rates to the intermediate country not subject to river competition because there was a water-compelled rate between Memphis and New Orleans.

Mr. SPENCE. There isn't any reason why they should.

The CHAIRMAN. If they had not had to reduce their rates in order to meet water competition abnormally, they might, then, finally have given decrease on all of it by reason of increased earnings.

Mr. SPENCE. They would not get increased earnings by allowing the traffic to go to the river. They would get decreased earnings. That is the whole basis of this thing. I would agree with you fully if that was the result of this policy, but it is not the result of it.

The CHAIRMAN. Well, perhaps I am dwelling too long on this; but you are the first representative of the railroads that has been before us, and if they are all as able as you are I will admit that we have been losing by not having them before us heretofore. I apologize to the committee and to the rest of you for having taken so much time, but it is due entirely to the high opinion I have of the gentleman I am interrogating.

Mr. HENRY C. BARLOW. Mr. Chairman, if I might interrupt a moment, I am here representing the National Industrial Traffic League, and I have a committee of several gentlemen with me representing the National Organization of Shippers, a committee of seven or eight gentlemen here from different parts of the country, and we would like to deal with this subject on broader grounds than the purely transcontinental intermountain situation. Mr. Spence is within easy calling, while many of our members are connected with State institutions moving coal, etc., and we would like to request that the committee let us have an hour, and then Mr. Spence can be called again for examination.

The CHAIRMAN. Is that satisfactory to you, Mr. Spence?

Mr. SPENCE. Perfectly.

The CHAIRMAN. Then Mr. Spence will resume after we have had the hour for these other gentlemen. I did not know the situation that you just gave. You may proceed, Mr. Barlow.

**STATEMENT OF MR. HENRY C. BARLOW, CHAIRMAN OF THE
EXECUTIVE COMMITTEE OF THE NATIONAL INDUSTRIAL
TRAFFIC LEAGUE, CHICAGO, ILL.**

Mr. BARLOW. Mr. Chairman and gentlemen, I am chairman of the executive committee of the National Industrial Traffic League, an organization comprising 465 members, embracing 171 cities throughout the United States. I have a roster of the league, that the members of the committee may know how its membership is constituted [presenting list of members].

The membership of the league is largely composed of men who have devoted their entire life to the study of transportation problems and the general conditions existing throughout the country. Associated with us are many large industrial and commercial concerns as well as representatives of various commercial organizations.

The speaker spent the first 30 years of his working life in railway service, holding various official positions. Speaking to this transcontinental situation, his personal experience takes him back to 1884, when he was general freight agent of the Atchison, Topeka & Santa Fe Railway. For the past 10 years I have been associated with the Chicago Association of Commerce, of Chicago, Ill., an organization comprising 4,000 member and including substantially all of the prominent industrial and commercial concerns. During that time I have appeared in substantially all the cases before the Interstate Commerce Commission in which the intermountain country has evoked the power of the commission under the so-called long-and-short-haul clause, fourth section.

May I preface my remarks by saying in all earnestness that myself and my associates are convinced that this is hardly a proper time to bring forward and urge the consideration of such an important question as this long-and-short-haul clause of the law.

We are at war. The minds of the business world are engrossed in but one thought, the winning of the war. They have little time and less inclination to turn aside to concern themselves with technical transportation questions. I am convinced that this accounts for the apparent fact that those appearing before the Senate com-

mittee came largely from one section of the country. Those of us living east of Colorado are as deeply concerned in these questions as those living west thereof, but the war and the incidents growing out of it so attract our attention that we have little time for anything else.

Again, there is at the present time no so-called water competition between the Atlantic and the Pacific coast and there may not and probably will not be for two or three, or perhaps several years.

Mr. SHAUGHNESSY. May I interrupt you to inform you that all of the territory south of the Potomac and the Ohio Rivers and east of the Mississippi River is also included here, so that you can direct your attention to the southern States as well as the western States.

Mr. BARLOW. As the rates are now adjusted by order of the Interstate Commerce Commission, I do not understand that anyone has any just grounds to complain of the operation of the long-and-short haul feature of the act to regulate commerce as it now stands.

For this and other reasons, we feel that this is not just the time to anticipate trouble in the future.

The railways are in the hands of the Government, and for 21 months after the close of the war. Congress in its wisdom has given the President the power to make rates and put them into effect immediately, if he so elects. Under these conditions entirely new and untried situations may arise to which we, as shippers, look forward with confidence, but with some natural apprehension. Would not the change now proposed in this law tie the hands of the President as well as those of the Interstate Commerce Commission?

Gentlemen, you will appreciate the fact that the effect of the long-and-short haul provision of the act to regulate commerce is not confined solely, but in only a small part to the territory embraced in the so-called intermountain territory. That is indeed a very minor phase of the question. This provision is Nation wide.

Thousands of cases are at issue. Can you, from the somewhat ex parte statements made before you in this hearing, disclose fully the effects of a rigid long-and-short-haul provision of the act upon the commerce and industry and the railroads of the country, as a whole? Undoubtedly, there is some merit on the side of our intermountain friends. I think we must also concede some merit in the opposite contention. If this be true, as has amply been demonstrated in the past, is it wise, proper, or expedient to absolutely foreclose either side? We are of the opinion that such action would be unwise. We are convinced it would be better and more in keeping with past experiences and practices to leave such disputes to the adjudication of the Interstate Commerce Commission, where they naturally rest under the act, a body in whom we have confidence and upon whom you have conferred ample powers to deal with the subject.

Gentlemen of the committee, the National Industrial Traffic League, which I represent here as chairman of its executive committee for the past 11 years, has 465 members from the Atlantic to the Pacific coast and from the Gulf to the northern frontier of our ally, Great Britain. As before stated, these are men of long and practical experience in transportation and the commercial aspect of transportation.

The league has always opposed a rigid long-and-short haul provision of the act. I may say that the present provision is substantially

as urged upon Congress by the league. We believe it to be fair and reasonable and the very best rule yet devised for dealing with this perplexing question. It provides that intelligence and authority shall sit in judgment where questions and disputes of this nature are involved. In our judgment that is the only safe way in dealing with the regulation of the carriers and their relations to the public.

I repeat, without fear of successful contradiction, that every single case arising under the provision of the act which we are now discussing—and, I repeat, there are thousands of them; the Interstate Commerce Commission can undoubtedly give you references to the numbers of those cases which they have handled—I repeat, each presents an entirely different angle, aspect, and phase. I venture the assertion that a rigid prohibition, as here proposed, would soon engulf Congress with protests from almost the entire shipping public; that is to say, that part of the shipping public which practically produces 85 per cent of the commerce of the country.

At a meeting of the National Industrial Traffic League held in Chicago March 21 and 22, 1918, a committee was appointed to come here and set forth their views on this subject, and the committee, who are now present, consists of Mr. Devant, of Memphis; Mr. Wheeler, of New England; Mr. Bentley, of Chicago; Mr. Glover, of Richmond; Mr. Rhodehouse, of Youngstown; Mr. Morgan, of Houston, Tex.; Mr. Wilson, of Toledo, Ohio; and the speaker.

We were instructed, on behalf of the league, at the meeting in Chicago, at which 61 cities were represented, by unanimous vote, to appear before you and voice the request that no change be made in the present provision of the act.

We approve the long-and-short haul provision of the act as it is written in the law to-day. We need under present conditions every mile of railroad we have, whether the railroads have long or short mileage between any two given points. We are glad to have the use of the longer mileage, because the Government largely monopolizes the shorter ones.

Let us not impose a penalty, at least under present conditions, particularly in view of the fact that the principal complainants here represented are suffering no hardship under the present provision of the act, as there are not rates to Pacific coast points lower than to the intermediate points.

We respectfully invite your attention to the fact that the carriers can no longer, under the provisions of the law as it now stands, work their own will as they have in past years. They must justify each and every departure from the prohibition of the fourth section and also the extent to which they may depart from time to time is absolutely under the control of the Interstate Commerce Commission, where we believe it should remain, in order to create the greatest good to the greatest number.

Looking at this question as we do from the viewpoint of the entire country rather than one section of the country, we respectfully urge you gentlemen that no change be made in the so-called long-and-short-haul provision of the act at this time.

We believe the vast majority of the shippers who produce the great commerce of the country are satisfied with the present wording of the law.

There are one or two matters which I would like to take up which were drawn out in the cross-examination of Mr. Spence. The first of those is in reference to free terminals. Gentlemen, there are no free terminals in the United States. The rates pay for the terminals. It has so been held by the Interstate Commerce Commission and the United States Supreme Court in the Los Angeles case. In all the rates and schedules of rates which the commission has made recently—and I refer particularly to the Iowa-Nebraska case and the so-called Central Freight Association case, which includes the States of Ohio, Michigan, Indiana, and Illinois—and in the so-called southwestern cases—the commission arrived as nearly as possible at the cost of terminal service and added it to the rates.

Then again, as to the Panama Canal, addressing myself to some of the questions which were asked by the chairman, I want to say this: It should be borne in mind, and I believe it will be, that the great Central West is very much interested in the commerce on the Pacific coast. About 52 per cent of the total commerce going to the Pacific coast points originates at and west of Pittsburgh.

Now, in encouraging the Panama Canal, would it be expedient, wise, or proper to make such rates that would take all of that commerce away from the manufacturers of the Central West and transfer it to New York? That would happen if these low rates continued by water and no opportunity was given the Central West and the Mississippi River Valley to compete for this commerce at the waterborne points.

Mr. SANDERS. What do you say about utilizing the Mississippi River.

Mr. BARLOW. I wish we could; unfortunately, we can not.

Mr. SANDERS. Why?

Mr. BARLOW. Because we have no connection from Chicago to the Mississippi River.

Mr. SANDERS. You did not use the word "Chicago"; you used the words "Mississippi River Valley."

Mr. BARLOW. I will go to St. Louis. The Mississippi River has fallen into nonuse. Again, there are no steamship lines from New Orleans to the Pacific coast.

Mr. SANDERS. Therefore, as there are none, it follows necessarily that there never will be any.

Mr. BARLOW. Not necessarily; we are very anxious to do that. We would be glad to divert our business to the Mississippi River if we could. We would be glad to see New Orleans opened as a port—

Mr. SANDERS. It is a port to-day. It does not have to be opened as a port.

Mr. BARLOW. Not as to transcontinental business.

Mr. MCCARTHY. I was going to ask if your statement is predicated upon the assumption that the people of the intermountain country are asking that the rates from points of origin in the Central West be raised to a point higher than the rates from the producing points on the Atlantic seaboard to the Pacific coast.

Mr. BARLOW. I do not assume they are. That would be very unwise.

Mr. SANDERS. You made the statement that the Mississippi River had fallen into disuse. Will you be kind enough to state why it

has fallen into disuse? It can, as you well know, float the commerce of the entire United States. Why has it fallen into disuse?

Mr. BARLOW. I do not believe I can answer that question.

Mr. SANDERS. Everyone of us who live on the river know why.

Mr. BARLOW. I think, however, that one reason has been this: The receiving and consuming territory on the Mississippi River has naturally found its terminals on the railroads. States along the Mississippi River have not improved their water terminals. I think those are two reasons.

In Chicago we are preparing for it, and we spent \$4,000,000 for a public dock.

Mr. SANDERS. We have spent many times that amount in New Orleans, and New Orleans has the finest docks and terminals in the world.

Mr. BARLOW. True, and it has been very profitable for you.

Mr. SANDERS. One other question: There is not a city from St. Louis to New Orleans that has not better terminal facilities to-day than it had when the traffic was river borne. Why is not the traffic still being river borne?

Mr. BARLOW. Of course, since the war began it has been impossible to enter into any new enterprises.

Mr. SANDERS. I am not talking about the war. The traffic of that country used to be river borne; it was borne on the river.

Mr. BARLOW. Previous to the war.

Mr. SANDERS. Now, with better terminals and better facilities, it has, as you say, fallen into disuse. Why?

Mr. BARLOW. I have never made a study of that. I do know, however, that in our efforts to work our traffic by water we found that the terminals were all on the railroads.

Mr. SANDERS. Do you not know the reason of it is that the traffic has been strangled to death by the railroads?

Mr. BARLOW. I did not know that.

Mr. SANDERS. Then your information is very meager.

Mr. BARLOW. I admit I do not live on the river.

Mr. LYON. May I ask this question: Would a rigid fourth section hurt the railroads in getting business at Mississippi River points?

Mr. BARLOW. I do not think I can answer that. I do not live there.

Mr. LYON. Then what is your view about this. I thought you were testifying because you had some knowledge of the effect of the fourth section on the railroads. That is the real question.

Mr. BARLOW. My real purpose is to bring your attention to the fact that the application of the fourth section and the departures from it are oftentimes, by reason of long-line hauls, as some of my confreres, who will deal with that question, will tell you, not confined to water competition a particle.

We move business from New England into certain parts of eastern Ohio. The short lines makes the rate, and under present conditions it is impossible to ship over that line because it is so congested. In order to reach that territory we have to move through the higher-rate points to get there and we utilize the longer lines. There are thousands of cases of that kind not controlled by water competition a particle.

We need all the railroads we have, every one of them—the short lines and the long lines—and we see no reason at this time to penalize the longer lines simply because they happen to be longer lines and their rates at intermediate points may be somewhat higher. Others will tell you they have no control over the traffic; that the Government moves it anywhere they want to.

I have here, Mr. Chairman, a communication which I would like to submit for the record. I expected to have with us a representative from the Missouri River and also a representative from Cincinnati, but they are not able to be here. I would like to submit to the committee and have printed in the record this letter from the Kansas City Chamber of Commerce.

The CHAIRMAN. It will be printed as a part of your remarks.
(The letter referred to is as follows:)

THE CHAMBER OF COMMERCE,
DEPARTMENT OF TRAFFIC,
Kansas City, Mo., March 22, 1918.

DEAR SIR: Senate bill 3777 and a companion bill in the House propose to amend section 4 of the act to regulate commerce, making the long-and-short-haul provision as well as the combination of intermediate rates absolute. These respective bills have been introduced by Senators Poindexter, of Washington; Shafroth, of Colorado; Henderson, of Nevada; and Representative Hayden, of Arizona.

The Senate Committee on Interstate Commerce. It is understood, has completed recent hearings on this matter, and the House Interstate and Foreign Commerce Committee will conduct hearings next week thereon.

The present provision of the law was adopted in 1910 after exhaustive consideration by Congress, and it leaves in the Interstate Commerce Commission power to determine in special cases, after hearing, to what extent, if any, a departure from the long-and-short-haul rule may be allowed.

The 1910 enactment contains the following proviso:

"That no rates or charges lawfully existing at the time of the passage of this amendatory act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission."

Congress has steadfastly repeatedly thus far refused to fasten the rigid long-and-short-haul rule upon the rail carriers. Under present abnormal conditions, with the rail carriers temporarily in the hands of the Government, the forces seeking a change in the fixed and permanent policy of Congress have organized themselves, with headquarters in Washington, D. C., and have begun propaganda by which they aim to bring pressure upon Congress to recognize their claims.

This is only a continuation of the fight which for a number of years has been waged by intermediate Pacific Coast States in Congress and before the Interstate Commerce Commission to have their all-rail rates equalized against the rates to the Pacific coast proper which have been influenced by water competition. (See S. 7504, 64th Cong., 2d sess.; Poindexter.)

The Interstate Commerce Commission in a recent decision prescribed rates which are now in effect, no higher to the intermediate territory than to the coast, based upon the temporary utter absence of effective water competition, which the testimony showed had been occasioned by the withdrawal of shipping through the Panama Canal as a result of the vessels thus engaged having gone into transoceanic trade. (48 I. C. C., 79; 46 I. C. C., 236, 252.)

The effort now being made is to project and guarantee for the future this equalized rate condition by absolute mandate of Congress on the theory and claim as made that commercial and industrial development of the inland territory is hampered and held back by reason of all-rail rates to the coast being made less than to the short-haul territory, due to the competition of rail and water carriers for the coast business. It is claimed that under Government operation of railroads those agencies of transportation should not be allowed to

make rates in competition with water carriers through the Panama Canal, itself constructed at Government expense.

We can hardly see the point of this argument, since under Government control of railroads the Government is heavily interested in the rail carriers transporting all the tonnage under reasonable and fair rates, which they can secure, and a surrender of the Pacific coast tonnage to water carriers, unless they themselves were owned and operated by the Government—which they are not—or alternatively the forced leveling down of the intermediate rates to the basis of water-compelled rates at the competitive coast points would mean a loss in railroad revenues which would have to be made up by rail traffic otherwise, or a deficit ensue.

But a rigid long-and-short-haul law would be much broader in its effect than the curing of the local situation complained of by the intermediate Pacific coast territory.

No circuitous route could participate in the traffic between termini served by short routes except at penalty of observing as maxima such rates from and to intermediate points on the circuitous route. This would have the effect largely of localizing to the shortest possible routes all the traffic moving between competitive points and exclude all routes otherwise, which would indeed be revolutionary and create a transportation congestion the like of which has not heretofore been experienced. It would paralyze both the short line, which would receive all the business, and the indirect line, which would receive none of the business. The one would be overwhelmed with traffic and the other starved to death.

The Interstate Commerce Commission has under the amended law imposed certain limitations which by many are thought even to be too drastic upon circuitous routes, and which do not give proper consideration to their disadvantages, but such rulings are nothing like as severe in effect as is proposed.

We consider that the legislation is uncalled for and unwarranted under present conditions, and would be vicious in its results. We therefore respectfully and emphatically protest against it and trust that the law as to the long-and-short-haul rule will be left unchanged, thus leaving to the commission the power to so administer the statute under the facts in each case of violation as to not do violence to either the commerce or railroads of the country.

There is no reason, in our opinion, why the combination of intermediate rates provision of the fourth section of the act should not be made absolute; in fact, the literal language at present seems to make it so, but in various decisions the commission has, after hearing, allowed relief therefrom.

Yours, very truly,

R. D. SANGSTER,
Transportation Commissioner.

C. W. LONSDALE,
Third Vice President, in Charge of Traffic.

MR. SHAUGHNESSY. You have made a very spirited defense of the administration of the Interstate Commerce Commission, Mr. Barlow, and you have also referred to the fact that the Mississippi River has fallen into disuse in so far as being an effective transportation agency is concerned. I would like to read this excerpt from the southeastern case (30 I. C. C.), referring to the rates from New York to Memphis, Tenn.:

There is a disconnected service between New York and Memphis, regular boats plying between Natchez to Vicksburg and Memphis. Water competition is to be regarded as potential but not actual, and the testimony in this case indicates that any material advance in the rates between New York and Memphis would without doubt result in the reestablishment of active competition on the Mississippi River.

I would like to ask if you indorse, or whether your association indorses, that administration of the fourth section in its present state?

MR. BARLOW. I should say we did. I agree with Mr. Spence in one particular. I think under the law in the hands of the Interstate Commerce Commission they may so shape the operations of water

and rail carriers as to keep either one of them from destroying the other. That was my understanding of the intent of the present law. The Government has put as much money in the transcontinental railroads and the various States and communities have put a great deal more in the railroads than we ever put in the Panama Canal. We do not want to upbuild our water traffic to the unnecessary harm of the railroads, and neither do we want the railroads to pursue a policy that will be destructive of water competition. Therefore Congress, in its wisdom, has put in the hands of this expert body of men called the Interstate Commerce Commission the power to regulate those things, and I believe that up to this time they have done very well at it.

Mr. SHAGHNESSY. In this case the commission was justifying a differential of \$8 a ton between New York and Grand Junction, Tenn., as compared with Memphis, Tenn. The distance from New York to Memphis is 1,160 miles, and the rate is \$20 a ton. Over the same line in the same direction the distance from New York to Grand Junction, Tenn., is 1,107.6 miles, or 52.4 miles shorter than the distance to Memphis, Tenn., and the rate was \$28.20 per ton, or an excess over the Memphis rate of \$8.20 per ton. The commission wound up its justification of that in this manner:

That any material advance in the rates from New York to Memphis would, without doubt, result in the reestablishment of active competition on the Mississippi River.

Do you support that?

Mr. BARLOW. I could support that decision of the commission. I think it is very wise under the circumstances. I think a great many of us forget this fact. We think that competition exists wholly in methods of transportation and wholly between two certain points. That is a fallacy of so many people who talk about the long-and-short-haul provision. The competition exists in the goods, and if the roads could not go into Memphis and carry goods from the great distributing points east of them, an extremely low and active water competition might take the entire business to New Orleans. Perhaps New Orleans would like to have it. I have no doubt she would, but the question is whether that so equalizes those things that all communities and all markets shall go into various communities and have this healthy competition that is always the upbuilding of a community. I do not mean destructive competition, but I do mean healthy competition, and under the act now in effect the commission can regulate that and control that healthy competition that is absolutely necessary.

Mr. SHAGHNESSY. Then, so far as the development of intermediate territory is concerned, you do not agree with this statement?

Mr. BARLOW. I say that undoubtedly the commission had in mind that unless some rates were made to Memphis from other territories, not reached by water direct, that the water might divert the whole traffic to some other communities, to the absolute elimination of Atlanta or some other points.

Mr. SHAGHNESSY. It was shown at that time that in 1887 the Mississippi River was carrying a tonnage of 850,000 tons per annum, whereas at the time they were making the inquiry it had dropped to 80,000 tons. The question arose as to the fixing of the rate at Mem-

phis no lower than at Grand Junction, Tenn., and the commission said they would not make that adjustment, because if they did, and increased the rates materially, it would without doubt result in the active competition of water transportation on the Mississippi River. They are therefore excluding from the business water transportation lines.

Mr. BARLOW. I think not. I think the commission is dealing not only with actual but with potential water transportation.

Mr. SANDERS. To my mind this whole bill means water competition.

The CHAIRMAN. We are very much obliged to you, Mr. Barlow. Whom will you have the committee hear next?

Mr. BARLOW. Mr. Chairman, I would like the committee to hear now Mr. Wilson, of Toledo, Ohio.

STATEMENT OF MR. HERBERT G. WILSON, TRAFFIC COMMISSIONER, CHAMBER OF COMMERCE, TOLEDO, OHIO.

The CHAIRMAN. Mr. Wilson, will you please state your full name, your residence, and the position you occupy.

Mr. WILSON. My name is Herbert G. Wilson; I am traffic commissioner for the Chamber of Commerce of Toledo, Ohio.

I have only a brief statement to make, Mr. Chairman. I want to indorse substantially everything that Mr. Barlow has said in opposition to the proposed bill. In our section of the country, which is known as the Central Freight Association territory, in which water competition does not enter very largely, so far as the immediate Central Freight Association is concerned, an absolute long-and-short-haul clause, as is proposed here, would really be very disastrous to the commerce of the country, because of the fact that it would restrict practically every point to one route between that and almost any other point in the same section.

At the present time rates apply between any two points via substantially all the routes that serve those two points, regardless of their length.

In many instances relief has been granted by the commission under the present fourth section of the act for good and sufficient reasons, or in cases where specific relief has not been granted rates applicable are protected by reason of filing of fourth-section applications which may not yet have been heard by the commission.

An illustration of the various rates and the manner in which traffic might be restricted to one route might be given by using the cities of Buffalo and Toledo. The short line is, of course, via the New York Central. Rates apply from Buffalo via the Nickel Plate in connection with the Clover Leaf Road, with which the Nickel Plate connects to the southwest with the city of Toledo, making it necessary for the road, in order to handle the business at the rate of the short line, to handle it through more distant points, and in such instances, under the scale of rate adjustment in that territory, the rate to more distant points would normally be higher than the rate to Toledo, and yet under the present provisions of the act as administered by the Interstate Commerce Commission the diverse route is permitted to enter into competition with the short line.

The result of an absolute fourth section under that illustration would be to restrict, as between those two routes, the traffic to the short line of the New York Central. That is only one illustration.

The routes between those two points alone can be multiplied by every westbound line operating from Buffalo coming in contact with a north and south or southwest or southeast line operating to and from Toledo, and the lines are as numerous there as the ribs of a fan, so that there are innumerable routes from Buffalo. It is true from Pittsburgh; it is true from Cleveland to Chicago, and it is true from Cleveland to St. Louis. It is true from Toledo direct and into the southeastern section across the Ohio River into Atlanta, Ga., and Birmingham, Ala. It is true from Chicago and it is true from Detroit.

There are innumerable routes, any one or all of which the public may use at the present time under the present provisions of the fourth section, which they probably would not be enabled to utilize if an absolute long-and-short-haul clause were operating, due to the fact that the necessity always exists for the protection of the carriers' revenue, and this enables them to protect their intermediate points. If they are not permitted to meet existing competition, whether competition of rail lines or of a different character of lines, this leaves them to protect their interest only by the holding up of the rates to the intermediate points and retiring from business at the competing point.

That has been the practice, and it is the history of the roads practically in all their operations since the present fourth section of the act became effective.

Another illustration, getting a little outside of the Central Freight Association territory, and not connecting the competition with water competition at all, is in the traffic between Chicago and Kansas City. There are six lines of railways, single lines, between the two points. The distance varies from 454 miles via one line to 530 via another, and yet the rates between Chicago and Kansas City are applicable via each of those lines.

The routes between Kansas City and Chicago are multiplied by just the number of lines that operate to and from the Mississippi River to Kansas City on the one hand and Chicago on the other, with almost as much diversity of mileage.

In the case of an absolute long-and-short haul clause, the short line between Kansas City and Chicago, which is the Santa Fe, would establish the rates between those two points. The Santa Fe Railway, of course, would be protected in its local traffic.

Such an act might result in the Chicago & Great Western, for instance, which is a very important line, retiring from the Chicago-Kansas City traffic in order to protect the rates at its intermediate points. And so with numerous other lines. Similar illustrations might be given with respect to the lines from Chicago to New Orleans, or from St. Louis to New Orleans, or from Buffalo to New Orleans.

The great interest of the shipping public in this proposed bill is more with respect to the general traffic of the country east of the Rocky Mountains, rather than with respect to that traffic at and west of the Rocky Mountains, or the transcontinental traffic.

The CHAIRMAN. In reference to the Chicago & Great Western, does it make a practice of charging to intermediate points between Chicago and Kansas City more than on its Kansas City business?

Mr. WILSON. On certain classes of traffic the rates to and from intermediate points are higher than its Chicago-Kansas City rate.

The CHAIRMAN. On the same road?

Mr. WILSON. On the same road, over the same line, in the same direction, protected by the present fourth section.

Mr. SHAUGHNESSY. That is due to meeting rail competition as distinguished from water competition?

Mr. WILSON. Yes.

Mr. SHAUGHNESSY. Your testimony is directed rather to rail competition than to water competition.

Mr. WILSON. I think water competition has been covered quite considerably. I claim to know something about water competition, and I think the water competition end of this proposed legislation is small with respect to the influence or the effect the enactment of this bill would have on the traffic as a whole.

Mr. SHAUGHNESSY. Why is it small?

Mr. WILSON. Because the large end of it is, I think, the Pacific coast traffic, and it would have, perhaps, a somewhat larger effect on the traffic within the Mississippi Valley, and perhaps might have an effect with respect to the traffic competition between rail lines and lake lines along the Great Lakes. But all of that traffic combined is insignificant compared with the traffic of the country as a whole, and the bill, if enacted, will affect absolutely every part of the United States.

Mr. SHAUGHNESSY. What is Toledo's position as to the promotion of waterway transportation?

Mr. WILSON. I would not undertake to say what Toledo's position is.

Mr. SHAUGHNESSY. What is your position?

Mr. WILSON. My position, of course, is as an advocate of the promotion of waterway transportation. Personally, I think the enactment of this bill would have the effect of inducing water transportation under normal conditions, but not under present conditions.

Mr. SHAUGHNESSY. We are dealing with normal conditions.

Mr. WILSON. Yes.

Mr. SHAUGHNESSY. Do you concur in this finding made by the Interstate Commerce Commission in which they say with reference to the rates from New York to Memphis, Tenn.:

There is a disconnected service between New York and Memphis, regular boats plying between Natches to Vicksburg and Memphis. The water competition is to be regarded as potential but not actual, and the testimony in this case indicates that any material advance in the rates from New York to Memphis would without doubt result in the reestablishment of active competition on the Mississippi River.

Mr. WILSON. Yes; but I do not draw the same conclusion from that which you apparently do. I think in the Grand Junction case the commission was merely justifying the defense of the carriers for the making at Memphis of a water-compelled rate.

Mr. SHAUGHNESSY. That was the only cause they had for refusing to give relief to Grand Junction. Do you consider that the present fourth section gives the right kind of relief when it is construed in that manner?

Mr. WILSON. I think the present fourth section gives the right kind of relief, and in the Grand Junction case I must assume that the commission felt that the rate it allowed to Grand Junction was only a reasonable rate—a nondiscriminatory rate.

Mr. SHAUGHNESSY. I am using Grand Junction as an illustration of that territory along the Mississippi River, and as to all those points the commission made this finding:

Water competition is to be regarded as potential but not actual, and the testimony in this case indicates that any material advance in the rates from New York to Memphis would without doubt result in the reestablishment of active competition on the Mississippi River.

Do you indorse that finding?

Mr. WILSON. Yes; because it is merely a justification of the water-compelled rates made by the carriers. Their pronouncements of that nature have not been confined to that case or to that class of cases. There have been a number of similar cases, particularly with respect to—I was going to say with respect to grain traffic.

In a case of complaint of unreasonable rates from Kansas City to Memphis and New Orleans, in which the rates from St. Louis to Memphis and New Orleans were submitted in comparison as being reasonable rates, the commission found that the St. Louis-Memphis-New Orleans rates were water-compelled rates, although there was not actually a movement of grain on the Mississippi River and had not been for a considerable length of time, and found that an increase in the rail rates from St. Louis would unquestionably invite water competition. Therefore, those rates were held to be justified as water-compelled rates carried by the carriers, and that is the situation as to the grain-products rates generally within the Mississippi Valley to-day.

Mr. DECKER. In order to invite water competition the boats would have to charge the people more for carrying their freight than the railroads would have charged?

Mr. WILSON. No.

Mr. DECKER. Under the permission of the Interstate Commerce Commission?

Mr. WILSON. No; I do not think so. I think this is the thought that has governed: That the rail rates were made by the carriers low because of the lower rates made by the water lines, and, of course, naturally the result was that the water lines were driven out of business, and it was due to that.

Mr. DECKER. Then, to come back into the business, they would have had to have had a higher rate.

Mr. WILSON. That is probably putting it in another way. The way they did put it was that if they increased the rail rate above the rate they did carry, that would offer a sufficient margin to water-transportation investment; but as long as the rail rate was held as low as it is held there was no invitation to water-transportation investment, and that is the fact.

Mr. DECKER. Then does it not resolve itself into this question, whether it is wise, in order to resuscitate water transportation, to have higher freight rates?

Mr. WILSON. That is the result; whether it is wisdom or not I do not know. Of course, I think if the conditions of the world war had

not confronted the Government we would have had by now reestablished a water-transportation system, particularly on the Mississippi River.

Mr. DECKER. I do not live on the Mississippi River and I do not know much about it; but going on the theory that the Interstate Commerce Commission know their business and require the railroads to charge a rate that will pay some profit to them, then, if the railroads have the capacity to haul all the freight and can do it cheaper in that way than the water carriers can, where is the equity in trying to stimulate water competition if it can not be done as cheaply as the rail carriers can do the work?

Mr. WILSON. Of course, if it were a fact that the water lines could not transport traffic as cheaply as the railroads there would be no wisdom in undertaking to stimulate water transportation. But it is too well known to need comment, certainly not from me, that the cost of water transportation is so much less—it is stated to be one-sixth of the cost of rail transportation—that if it were not for the abnormally low rates made by the rail lines between two water points the water transportation would have been maintained. That was one reason why provision was made in the act to regulate commerce with respect to prohibitions against an increase by the rail lines of a rate which has been reduced because of water competition.

Mr. DECKER. In other words, they did not want them to go in and drive out the steamboat lines and then raise it afterwards?

Mr. WILSON. Yes; that was the purpose of it.

Mr. DECKER. Suppose that is not done. Suppose under the law when a railroad fixes its rate it has to stay by it, and it does fix a lower rate than water transportation, what can governmental agencies do in justice to resuscitate the water transportation?

Mr. WILSON. There are two points there, if you please. In the first place it is physically impossible for the railroads to establish at a profit a rate lower than the water lines can exist on.

Mr. DECKER. Then that means that the Interstate Commerce Commission has made a mistake.

Mr. WILSON. No; because I do not believe those problems have yet been presented to the Interstate Commerce Commission. It means this: That if a rail line should establish a rate that was lower than the water lines could make and live on, it must mean that the rail line is making a rate out of which there is absolutely not only no profit, but not even its cost of transportation, and it is the duty of the Interstate Commerce Commission to see that the rail carrier does not make such rates, and where the rail carrier does make such rates, I believe the commission has the power to require those rates to be increased.

Mr. DECKER. How long has it had that power?

Mr. WILSON. I think it is in the act. I think it has had that power since 1910.

Mr. DECKER. The theory of those who claim that the railroads have strangled water transportation—they must have strangled it before the law went into effect, or else—

Mr. WILSON (interposing). That was done.

Mr. SANDERS. That law was not decided to be constitutional until 1914.

Mr. DECKER. It strikes me you run against this proposition, that if that law had been in effect at the start of the railroad business, then the river business would have lived and competed with it, and if it had not, there would be just one conclusion to draw from it, and that it had no right to live because it was not the cheaper transportation, or else the commission did not administer the law justly. That is the thing I am trying to get information on.

Mr. SANDERS. That is the easiest thing in the world to know. A man who ever lived on the river will know how it has been done.

Mr. WILSON. Mr. Decker, you live in a state where there is a big river.

Mr. SANDERS. He says he has not lived on the river, so that he has not been in contact with these problems.

Mr. MCCARTHY. Is it your understanding that the law gives the commission the power to name an economic rate?

Mr. WILSON. No. But I think the power given the commission to establish just and reasonable rates takes into consideration as reasonable the question as to whether or not the rate which the carrier is making yields its cost, and if it does not yield its cost, I think the commission has the right to require a change, otherwise it is permitting an injustice to be done to others.

Mr. LYONS. Has the commission ever found any way to determine whether a railroad is getting its cost or not?

Mr. WILSON. I think you know better about that than I do.

I want to direct the committee's attention, if you please, to the result, the technical result, if this bill should be enacted as it is now proposed.

This bill is proposed to become effective 60 days after its passage and approval, and if it should be approved as it is now proposed, it would throw practically every railroad in the United States within 60 days in a violation of the provisions of this act, because there are hundreds of charges—

The CHAIRMAN (interposing). I do not think you need waste any time on the 60-day provision.

Mr. WILSON. The present situation could hardly be corrected, if the railroads undertook to-day to correct it and establish absolute long-and-short-haul rates throughout the country, within a year, at the least calculation, because it would require an examination of their tariffs, of their routes, and of the present conditions which apply, and it is too big a task to expect the railroads to do it in that time.

The CHAIRMAN. You may be sure Congress will not make an unreasonable requirement.

Mr. WILSON. I merely offered that as a just criticism of the present bill, and I assume you have that in mind.

Mr. DECKER. Theoretically, at least, I think I understand the justification of this difference in rates between long and short haul where water competition enters in, because water competition is a natural advantage that, we will say, anybody who gets advantage of it is entitled to, and I can see how, theoretically, as Mr. Spence said, that keeps the railroad out of that business and would not help any other point.

But I am not clear, and I have not heard any reasons given, why the same reason would apply where water does not enter in.

Take the illustration you gave of those five roads between Chicago and Kansas City. Suppose there is a town along the road that has a road running through it. Suppose the freight rate from Chicago to that town is as much as the freight rate from Chicago to that town on to Kansas City, we will say. There is no natural advantage that Kansas City has over that other town in between. Who is there to say if that town had justice done to it, it would not make as big a town as Kansas City? Why is there not discrimination there?

Mr. WILSON. The point is this. It is not a question as to the size of a town, whether the town is entitled to the rate or not. The fact is that Kansas City, in the illustration I gave, is served by the Santa Fe Railroad.

Take the city of Des Moines, Iowa, which is one of the intermediate towns between Chicago and Kansas City, on the Great Western. That town is served by the Chicago Great Western Railroad.

Treating it locally, in this sense it would not make any difference to either the Chicago Great Western Railroad or the citizens of Des Moines whether the Chicago Great Western road made the same rates from Chicago to Kansas City that the Santa Fe did because even if the Chicago Great Western did not make those rates, or meet the Santa Fe rate, Kansas City would be able to get its business, anyway.

Mr. DECKER. In other words, the short line by virtue of its shortness has the same part in the equation as the other road does by reason of its cheapness?

Mr. WILSON. Largely so. It makes the rate. In other words, as Mr. Spence very aptly put it, with respect to the New York-San Francisco business, the water is there. The Santa Fe road is there between Chicago and Kansas City, whether the Chicago Great Western enters into competition or not. The condition is there. It is not created by the road asking for the relief.

Mr. DECKER. Still there is a slight difference there, because you go on the theory that these are public utilities and everybody has the right to be treated the same. It would require two or three roads from Chicago to Kansas City to do this business, and the cost of the transportation, of building that other road would have to be paid for by the people who live in Kansas City, and it may be that Des Moines might be gouged.

Mr. WILSON. It so happens that the intermediate point pays a higher rate.

Mr. DECKER. I do not mean that, because that is the fault of the Interstate Commerce Commission if they do that, but I am going on the theory that they are always just and right. There is still a difference in my mind between those inland points and the places where the water enters in, because supposing you could not ship all the business from Chicago to Kansas City over the Santa Fe road. The Santa Fe would have to double track its road to do the business.

Mr. WILSON. If they are not a double track already, which they are.

Mr. DECKER. Well, they might have to treble track. In order to do more business they would have to have more facilities, and that would raise the cost.

Mr. WILSON. No; it might reduce it. The cost of transportation is reduced on a fully occupied two track road as compared with a one track road.

Mr. DECKER. You are dodging the issue there.

Mr. WILSON. I do not intend to do so.

Mr. DECKER. I do not mean you are doing it intentionally.

Mr. WILSON. You have gotten to about the same point that I reached ten years ago with respect to this intermountain Pacific coast traffic, and that is if the railroad can carry traffic to the Pacific coast at a profit then that ought to be the measure of a reasonable rate to the intermediate point.

Mr. DECKER. I followed Mr. Spence on that and I think I understand it. Now, let us wipe out the railroads and build some new ones and start from that basis.

Mr. WILSON. I wish we could.

Mr. DECKER. Let us suppose there is a town starting out there where Chicago is, and a little town where Des Moines is and then another town where Kansas City is. There is no question that everything else being equal, all their conditions being equal that the town that had two railroads connecting it with Chicago at the same rate would be apt to do more business and progress more rapidly than the town that only had one.

Mr. WILSON. It would depend on where the railroads came from. If you mean that one of the towns has two roads from Chicago—

Mr. DECKER (interposing). Suppose there would be enough general business developed to justify the construction of two railroads. Of course, if there was no need for the railroads that would not happen.

Mr. WILSON. No; because there are a lot of points that have two railroads that do not amount to anything.

Mr. DECKER. I understand that. If at the starting of the railroads we had been on the basis that the Commerce Commission should treat them all alike under the theory that they were public utilities, then it strikes me that the town that had two roads could get more transportation and transportation facilities than the town that only had one road.

Mr. WILSON. That is true; but you are discussing a question of rates. Take your illustration this way—

Mr. DECKER (interposing). Let me finish that. Then here is Des Moines, which only has one road, and that is a road which runs from Chicago to Des Moines, down to Kansas City, and all three of these towns are just starting. If you let the road running through Des Moines give as cheap a rate to the people in Kansas as the short line does, then it strikes me you are giving Kansas City an advantage that is not a geographical advantage or a natural advantage.

Mr. WILSON. Take the illustration you gave and let me answer it this way: Assume that Des Moines is only on one road, that it is on a line on which the distance is 530 miles from Chicago to Kansas City, and that is the only road in existence, and it makes the same basis of rate, and the rate from Chicago to Des Moines is on the same basis as the rate from Chicago to Kansas City.

A new road is constructed, the Santa Fe, which is 454 miles from Chicago to Kansas, but does not go anywhere near Des Moines,

Iowa. The Santa Fe Railroad voluntarily establishes a rate from Chicago to Kansas City which is less than the rate established by the Chicago Great Western at Kansas City, and it makes no rate to Des Moines.

The effect of the action of the Santa Fe—and it is an entirely profitable rate for the Santa Fe Road—the effect of the action of the Santa Fe Railroad is on the Chicago Great Western at Kansas City, and not at Des Moines. It does not affect the traffic at Des Moines one way or another. Is there any reason why the Chicago Great Western—

Mr. DECKER. That is what I am trying to get at, whether it does affect the people of Des Moines. You say it does not. I was trying to find out whether it did or not. If the Des Moines people do not care, if they made enough to pay them something more than the out-of-pocket cost, I have no objection.

Mr. WILSON. If the rate made at Kansas City did affect Des Moines, Des Moines would have an interest in that rate, but if the business from Chicago to Kansas City is going to move anyway—

Mr. DECKER (interposing). I will show you what I have in mind as to how it might affect Des Moines. Suppose there was a jobbing house in Des Moines that wanted new business in the territory around Des Moines. Of course, the Santa Fe road does not affect Des Moines because the Santa Fe does not run through there, but owing to the Santa Fe road making this rate, the other road makes the same rate to Kansas City.

Mr. WILSON. Yes, sir.

Mr. DECKER. Then can not the jobbing house in Kansas City compete with the Des Moines jobbing house?

Mr. WILSON. Yes; and it does, in a measure.

Mr. DECKER. Are you not then giving Kansas City an unnatural advantage over Des Moines and one that is not due to geographical position?

Mr. WILSON. No. Kansas City is only reaping the benefit of its natural advantage by reason of the fact that it has a shorter line there that is able to make a lower rate.

Mr. DECKER. If the jobbing house at Des Moines buys goods in Chicago and ships them to Des Moines, it can go out and sell those goods cheaper in that neighborhood than the Kansas City jobbing house could do, after paying the freight from Chicago to Kansas City, and then shipping them back, if the Kansas City house did not get a cheaper rate than the Des Moines house got.

Mr. WILSON. They can do that any way.

Mr. DECKER. They could not make as much money, could they, because if they paid the freight at that rate from Chicago to Kansas City—

Mr. WILSON (interposing). It has got to pay the freight rates to get back to Des Moines territory, in addition.

Mr. DECKER. Yes; and it is bound to make on that because the Santa Fe has cheapened the rate and the Kansas City house gets the benefit of that. If they both paid so much a mile for freight and the Kansas City house had to ship that much further, it would have a hard time competing with the Des Moines jobbing house.

Mr. WILSON. It could not do it except at points where the rates were the same.

Mr. DECKER. Is not that giving them an advantage which is not a geographical advantage?

Mr. WILSON. It is giving them an advantage which their location entitles them to, or because of the medium of transportation which they have. Just as the point located on the water is entitled to the benefits flowing from its geographical location, like the routes from Buffalo to Toledo via the water. You can not deprive Buffalo and Toledo of the advantage of the water transportation, regardless of the rates you may make by the rail lines, and if you do not allow the rail lines to meet that competition you are denying the rail lines the right to participate in the traffic; you are not creating a new condition either at Buffalo or Toledo.

Mr. ESCH. Would not Des Moines have through-rail connections, which would counterbalance any effect which might occur by reason of the Kansas City competition? Is not this competitive traffic of cities practically counterbalanced throughout the United States?

Mr. WILSON. In a very large measure. Of course, we were only using Des Moines as an illustration.

Mr. ESCH. Let me ask you this question: You have named six roads between Chicago and Kansas City, with the Santa Fe as the short line and the Chicago Great Western as the long line. If the long-and-short-haul clause is made absolute, the short line gets the traffic; is that right?

Mr. WILSON. That is to the distant point.

Mr. ESCH. If that be true, what effect would it have on the Santa Fe rates and the congested traffic?

Mr. WILSON. It would result in more highly congested traffic on that open route.

Mr. ESCH. Suppose another route did charge a greater amount for the Kansas City traffic. It would not get the traffic if it charged it?

Mr. WILSON. Under normal conditions; no, sir.

Mr. ESCH. That would affect its financial standing?

Mr. WILSON. It might.

Mr. ESCH. So those are factors that have to be taken into consideration with reference to the long-and-short-haul clause?

Mr. WILSON. Yes, sir.

Mr. ESCH. That is true all over the United States?

Mr. WILSON. We have that situation in our grain-products traffic from Toledo to New York. The shipping rate on grain products from Toledo via the New York Central and a number of other lines is 12½ cents. Via the Michigan Central from Toledo to New York, it is 13½ cents. Under normal conditions, the Michigan Central does not participate in the traffic to any great extent, and gets substantially none of it. It is only under the abnormal conditions that exist to-day that the Michigan Central gets any of that traffic because the other lines are congested or embargoed.

The CHAIRMAN. Is it not real economy for the Santa Fe to build another track, or sufficient tracks for the shortest line to do the business, instead of building another road?

Mr. WILSON. As an initial proposition, perhaps that is so, but not under the transportation conditions as they exist to-day. To do that it would require the double tracking of substantially every line in the United States to-day.

The CHAIRMAN. Would not that be cheaper than building entirely new roads?

Mr. WILSON. It might be, but you have these roads established today, Mr. Chairman. The routes are there, and there is no harm done if the long route is permitted to meet the rate of the shorter route.

The CHAIRMAN. This whole trouble grows out of the fact that there have been uneconomic and ill-advised investments in railroads.

Mr. WILSON. Unquestionably.

The CHAIRMAN. Are you going to keep that up forever?

Mr. WILSON. No; I think we have reached a point where we are getting away from that now. But I do not believe that this proposed legislation would have any good effect on or improve that condition.

The CHAIRMAN. It might not. I am talking about an ideal situation. Is it not better not to build any more roads where they are not needed, but double track the roads that are built and are now ready?

Mr. SNOOK. Would that not favor one section of the country at the expense of another section?

Mr. WILSON. I do not think that would affect it. Through traffic does not help or affect the development of the intermediate territory.

Mr. SNOOK. It affects the development of the country to build a railroad.

Mr. WILSON. Not the development of a local territory, except very incidentally. The fact that you may handle a very intense tonnage from the Missouri River over one line to the Pacific coast does not have anything to do with the development of the local territory.

Mr. SNOOK. You did not understand the point I am trying to make. I understood the chairman to say that the economical way would be to have the railroads always between the two shortest points.

The CHAIRMAN. No; I said have your through business done over the short line.

Mr. SNOOK. But if you did that it would only favor one section of the country, that section of the country through which the railroads would go, would it not?

Mr. WILSON. As I understood, the chairman was referring to the through traffic.

Mr. SNOOK. I am talking about the country.

Mr. WILSON. Of course, every time you handle a trainload of freight you are presented with a new problem, because it may be in a different locality, or from a different point of origin, or going to a different point of destination, or be for different uses. I do not believe that the fact that traffic should be confined always to the short line because it is always through traffic from its point of origin to its point of destination would affect one way or the other the development of the country.

Mr. SNOOK. But if you build two roads, one through the short-line territory and the other being a long line, both of which have developed the country, will you not use the long line as well as the short line?

Mr. WILSON. For its business, of course, and for the benefit of the particular road as well as for the benefit of the commerce itself,

you should utilize both. It is a fallacy to assume that you can confine your traffic always to the short line.

Mr. SNOOK. We have heard a good deal about the different sections of the country, and the different sections of the country would be affected by this law. What effect would it have upon the country generally and upon the people of the country as a whole, without reference to any particular section?

Mr. WILSON. I think it would be very serious. I think the effect would be very serious and very disastrous.

Mr. SNOOK. Why?

Mr. WILSON. Because, carried out to its logical effect, an absolute long-and-short haul section of the act will restrict the movement of traffic to the short line. That interferes with the prompt movement of commerce, and when you interfere with that you interfere with the development of the country.

Mr. SNOOK. What effect would it ultimately have on the rate?

Mr. WILSON. The average rate would be materially increased.

Mr. SNOOK. That would be disastrous on the country, would it not?

Mr. WILSON. In some respects; yes, sir.

The CHAIRMAN. In other words, the more unnecessary capital we have and the longer the lines, the cheaper the rates; the more capital invested, the more motive power, the more trackage to keep up, the cheaper the rate?

Mr. WILSON. No; I do not think that, because I do not assume that we have much unnecessary investment in railroads.

The CHAIRMAN. If we want to encourage circuitous routes and the building of railroads where they would not pay without having this abnormal, unnatural business, I should say your plan would lead to much higher rates. Do you think we should encourage the uneconomical building of railroads as they have heretofore been built?

Mr. WILSON. I think not; no, sir.

The CHAIRMAN. I am not talking about the provisions of the bill, but about a general policy.

Mr. WILSON. I agree with you that that should not be encouraged as a general policy.

The CHAIRMAN. It looks to me like an uneconomic way of developing the whole country for the future, to go on doing as has been done.

Mr. WILSON. That seems to deal with the question of the initial installation of railroads.

The CHAIRMAN. There is a lot of it yet to do.

Mr. WILSON. Yes; but it will not be for some time. Here is the point we ought not to overlook.

The CHAIRMAN. The ablest railroad men of the country have made statements before this committee time and again that they need as high as \$1,250,000,000 invested in new construction each year for the next 15 years—that is, that amount annually—and that does not mean all new construction, but double tracking what they have and increasing their facilities. Are we going to adopt a policy to prevent that development?

Mr. WILSON. No. The purpose of that development is either to reduce the cost of operation, so that they can continue transporting goods at the present rate, or in order to enable them not to have to increase their rates to such an enormous extent.

The CHAIRMAN. The railroad representatives said here that we have reached a period of suspended development and that without something new in the railroad situation in the way of legislation they can not serve the needs of the country further.

Mr. WILSON. I know that has been said. It was started 10 years ago.

The CHAIRMAN. They virtually want to wipe out all interference by States, by State commissions, and have Federal charters for everything, and Federal control for everything, as near as possible, and a thousand and one things that look to me to be impossible to get.

They have reached a static condition. In other words there were less than a thousand miles of road built in the United States in one year. This country can not get along on that sort of thing, and if the roads like the Santa Fe can not be encouraged to do as much business as possible, to increase the investment in capital, the amount of maintenance, and everything of that sort, I do not know when we are going to get the \$1,000,000,000 to put into the roads every year during the next 15 years.

Mr. WILSON. Our transportation troubles are not due to railroads like the Santa Fe, and it is not roads like the Santa Fe that need this encouragement for development. Our trouble is due to the results which come from the unwise policy of building railroads. The wisely built and well-operated railroads are carrying the burden for the other roads. There are a good many miles of railroad in this country that might be torn up and scrapped and taken somewhere where they can be used.

Perhaps before we get through we will do some of that. Sometimes we feel like it.

Mr. ESCH. There were about 350 miles scrapped last year, but you would not advocate, with the roads located as they now are, that they should be torn up and the communities along those lines be left without facilities? It is a condition we have got to meet and not what we theoretically would like to have. The roads are here, and they ought to live, because they serve communities.

Mr. WILSON. A road that is frequently referred to as a circuitous route with respect to some classes of traffic frequently becomes a short route with respect to other classes of traffic, and there are few routes throughout the country that in some instances are not short lines between some given points. There is not any one line which you can point to and say this is a long line between all points, and therefore it has no right to exist, because it was improperly laid out. That line may be a short line between some other two points, and that may be a line that in such instances controls the rates, and it might have to depend for a large part of its support from the competitive traffic, and the rates on it would be fixed practically by other lines if they had to operate under an absolute long-and-short-haul clause, and if it became necessary to operate under such a clause, that road might be very seriously harmed.

Mr. SHAUGHNESSY. I would like to have you detail the Great Lakes rate situation. You live on the Great Lakes?

Mr. WILSON. I think Mr. Barlow knows the Great Lakes situation much better than I do. He has been more intimately connected with it than I have. My knowledge of the Great Lakes rate situation is

only incidental to my location at Toledo at the present time, and up to three years ago for a number of years at Kansas City, in connection with Lake routes via Chicago and other Lake ports.

The CHAIRMAN. Whom will you have the committee hear next, Mr. Barlow?

Mr. BARLOW. I would like the committee now to hear Mr. Morgan, of Houston, Tex.

STATEMENT OF MR. J. A. MORGAN, OF HOUSTON, TEX., REPRESENTING THE HOUSTON (TEXAS) CHAMBER OF COMMERCE.

Mr. MORGAN. Mr. Chairman, my name is J. A. Morgan. I live at Houston, Tex. I represent the Houston Chamber of Commerce.

I wish to say that we at Houston have spent a part of the Government's money and part of our own—something like \$6,000,000, I believe—about fifty-fifty, in the last three or four years to develop our commerce and create what we hope to be a competitive situation that would give us advantage acquired through enterprise and thrift of our citizens, viz, a 25-foot-deep channel from Houston to the Gulf.

Right here I want to say that I think practically all towns are built through enterprise and thrift of its citizens. There are lots of towns that have three or four or five railroads of which the population is only two or three thousand, and perhaps if there was enterprise and thrift they would build larger towns.

There is another thing which Mr. Shaughnessy called attention to yesterday—that the inland parts of the West, or the mountainous region, would be built up faster by having this long-and-short-haul clause abolished and a hard and fast fourth section rigidly applied. We have not found his contention to be the case in Texas. We have four important coast cities—Houston, Galveston, Beaumont, and Orange. They have been in existence, I guess, some of them, since 20 or 30 years before the Civil War. We find that Fort Worth and Dallas, inland towns, which have not as low freight rates as we have from seaboard territory, and never had, have thrived and have become important cities, and they are within 30 or 40 miles of each other, in the central part of the State; and we feel if the advantages that Houston, Galveston, Beaumont, and Orange have had in freight rates, if that was the prime factor in city building, Houston should have a million people as compared with Dallas and Fort Worth, but it does not seem to have worked out that way. I think the thrift and enterprise of the people of Dallas and Fort Worth made their cities. It was because they had a good location, and not because they had higher freight rates than the coast cities.

Now, in regard to the matter of circuitous routes, perhaps Houston has five or six different lines of railroads to Dallas and Fort Worth. Probably only one of them is the short line. We use all of these railroads to transport freight to and from Dallas and Fort Worth. If the long lines were required to reduce intermediate rates to meet short line competition and if these reductions seriously affected their intermediate revenue, the long or out of route lines would very likely go out of the Fort Worth-Dallas trade, thus leaving Houston to the mercy of the short line. In the furnishing of equipment and prompt handling of freight to those places, we would

be left in a very serious condition. Heaven knows its hard enough now to get equipment to load during busy times with five or six roads to draw from. If we were placed at the mercy of only one line where we now have six, commerce would seriously suffer, and products spoil awaiting transportation. We want as many roads as it is possible to secure to reach competitive markets. It not only stimulates trade but insures prompt transportation service.

This is the main effect as I see it, that this bill would have upon our particular territory. Furthermore, I am sure that with the same enterprise, the same thrift, the same ratio of money and the same energy put into boat lines that are now put into rail lines, the boats would put as many railroads out of business if this bill became a law as it is here claimed that boats are put out of business now by rail lines, especially the north and south rail lines.

From New York to New Orleans, where there are so many different ports to be touched, if the boat lines should make rates non-compensatory to rail lines between those points and this bill became a law requiring the railroads to pull their intermediate rates down to meet the boat-port rates along the Atlantic coast, the railroads would soon be in the position it is claimed the boats are now in, viz, bankrupt and out of business.

I have lived on the Mississippi River at Arkansas City, Memphis, Greenville, and St. Louis, and I do not agree that railroads have put boats out of service on the Mississippi River. In my opinion, the reason why the boat lines are out of business is because they did not have sufficient enterprise or money behind them and failed to keep pace in progress in competition with the railroads.

The boat lines should have asked Congress for an amendment to the acts to regulate commerce requiring railroads to give physical connection with wharves at all important landings such as St. Louis, Cape Girardeau, Cairo, Memphis, Helena, Arkansas City, Natchez, Vicksburg, and New Orleans, so that cars coming from industries located in these cities, or from interior points, could move direct from point of origin to the boats. If that was done, in my opinion, boats would now be actively in competition with rail lines up and down the Mississippi River.

No one is going to ship carloads of freight from interior points by rail to river cities and dray it by wagon from the railroad yards to boats, I do not care if the freight rate is less. They would rather pay a higher freight rate and ship it by rail under those conditions. During the days when the operation of boats on the Mississippi River was at its height of prosperity and had reached its maximum of efficiency, the operation primarily was for the comforts and convenience of passengers and the handling of freight was a secondary matter. We move between New York, Philadelphia, Houston, and Galveston about 700,000 tons of freight southbound annually via water. We have actual active rail competition. This freight moves via water because there is efficient service, direct rail connections, and a steamship organization handling the boats on business principles, the same as railroads handle their business. There are about five boats per week in this service, and we could handle twice that number if the boats were available. Because the Government has found it necessary to take over our boats during the war period,

is it proper to fasten a burden on our coast cities? By making this proposed amendment a law, the railroads knowing boats are not available will immediately advance coast and river city rates to the level of the intermediate, thus depriving the river and coast cities of their natural advantages during the war period at least. The intermountain country have gotten relief. There is not any conditions existing now that hurts them. With this relief they are coming here and asking that the entire country be penalized because sometime in the future they fear present conditions may be changed by the Interstate Commerce Commission. We ask this committee not to do this because they have their relief, and the passage of this amendment will not change present intermountain conditions. We know what will happen, with the shortage of boats, if this bill passes. If that occurs, the rates will go up to the level of the intermediate and we can not help ourselves, as we can not secure additional boats.

The CHAIRMAN. Suppose it should pass. When the Government ceases to control the railroads, what will happen?

Mr. MORGAN. I think we ought to take that question up when we come to it.

The CHAIRMAN (interposing). You do not believe in potential competition; you believe in actual things?

Mr. MORGAN. We believe in potentialities where there is a necessity for giving potential competition consideration. We can not see that that is the reason for passing this bill now and letting it go into effect after the war closes. If the Interstate Commerce Commission should unduly impose on the intermountain country when water competition is resumed we will help them out at our expense.

Mr. Shaughnessy sent out some propaganda over the country and I received some of it. I received a telegram from him in which he intimated that his bill would cure all the transportation evils, including those in the Shreveport case, and he referred to the Shreveport case in his letter. Perhaps some of the boys in Texas read between the lines and thought this bill might cure these objections, and telegraphed him to support the measure for them. Mr. Shaughnessy refers to the Shreveport conditions in his testimony before the Senate committee. Of course, the Shreveport condition is different from practically anything in the United States. All South lines from the North stop at Shreveport, and all East lines from the West stop at Shreveport. There are no lines running from the North to Texas through Shreveport, and there are no lines from the West running through Texas that go beyond Shreveport. If a different condition existed we could take care of the Shreveport controversy. We lost our fight in the Shreveport case, and I am not blaming the commission.

This bill proposes to become effective 60 days after passage. In my opinion it would take more than a year for railroads to properly adjust their tariffs after its passage. We think that there should be a happy medium; that is, the rail lines should be allowed to stay in this competitive business and the boat lines to stay in it, and that there should be a happy medium created and continued, so that no monopoly should exist either way. If you take away the competitive features of it, monopoly is bound to exist. I do not care whether it is a boat line or a rail line.

I believe the Interstate Commerce Commission should be empowered to make a rate. If the Interstate Commerce Commission was given the authority to name a rate, practically all the evils of importance in connection with this proposition would be cured.

The CHAIRMAN. Give them the power to make minimum and maximum rates and make all other adjustments?

Mr. MORGAN. Yes, sir. I want to say a word in regard to the matter of terminal service. In the Shreveport case the Southern Pacific Co. represented all the Texas lines, and through their expert statistician, Mr. Berry, made one of the most elaborate expositions of the cost of terminal service that I have ever seen.

Mr. MORGAN. Mr. Chairman, I think Mr. Spence, who is here, could procure a copy of this exhibit quicker than I.

Mr. SPENCE. I would be glad to send you a copy, Mr. Chairman.

Mr. MORGAN. Then Mr. Spence will furnish this.

This terminal exhibit took in everything, even including personal injuries, and the Interstate Commerce Commission took into consideration the proportion of the yard cost and put up the initial class rates sufficiently high to compensate the carriers for this service.

The CHAIRMAN. The rates were increased on the movement of traffic to pay for terminal service.

Mr. MORGAN. The first-class rate was increased from 13 to 23 cents for initial movement.

The last thing I want to call attention to is this. Most States that have anything to do with the making of rates do themselves depart from the fourth section. You would have a very peculiar condition arising if you passed this bill denying to the Interstate Commerce Commission that authority that the States would have.

Take it, for instance, in Texas. Suppose the Texas commission—and the chairman of our commission is here, Mr. Mayfield—he has authority to make a rate at the longer point lower than the intermediate rate. Suppose that authority still existed in Texas after this law had been enacted, what would be the effect? Interstate freight would be consigned to warehouses in Texas and distributed from these warehouses under intrastate rates, rules and regulations. I believe the Texas Commission and every other State commission would continue to allow the railroads to meet these short-line competitive conditions—this is my personal opinion—I do not believe the Texas Commission would make a one-line town out of Houston to Dallas when we now have five lines running into that point; with present congested conditions of traffic and shortage of cars.

It is hard to get cars now, with five lines running to Dallas, and if we reduced it to one line we would be ruined.

There is another thing I want to call attention to: We have a warehouse in Houston, recently completed, which covers 6 acres of ground. It is built of solid concrete, and the city owns it. Our citizens were taxed to build it, and it was built purposely so that any merchant in the State of Texas could consign his freight to this warehouse either by water or by rail and store it there and dispatch it throughout the State at the low water rates he could secure, and that was the purpose of building those warehouses. We have the same conditions at Galveston.

The CHAIRMAN. The municipality owns the warehouses?

Mr. MORGAN. The municipality owns the warehouses, and all of those things would be disrupted so far as we are concerned if this bill were passed. I have no fault to find with the intermountain situation except this, that their troubles have been cured, and as long as they have been cured why penalize the entire United States because of a condition they are afraid might happen some time in the future.

Mr. SHAUGHNESSY. The Interstate Commerce Commission gives notice that it will happen in the future.

Mr. MORGAN. When that happens I will come up here and help you fight it.

Mr. SHAUGHNESSY. I would like to ask you, Mr. Morgan, if you indorse the position taken by the Interstate Commerce Commission in the southeastern cases, which I have read to the other witnesses, with regard to the discriminatory rates applied along the Mississippi River, which is their justification for the short-haul rates they applied at Shreveport, and which have caused the troubles you have had.

Mr. MORGAN. The commission said in the Dallas soap complaint, in which Dallas complained of lower rates from Kansas City to Shreveport than from Kansas City to Dallas than the Kansas City Southern was the short line between Kansas City and Shreveport and the M., K. & T. had a right to meet this short-line competition without reducing the Dallas rate.

Mr. SHAUGHNESSY. How is it coming down along the river from St. Louis?

Mr. MORGAN. The V. S. & P. Railway east and west and the K. C. S. north and south makes the rates into Shreveport that the other lines have to follow in order to get the business.

Mr. SHAUGHNESSY. It has resulted in the long-and-short haul discrimination at Shreveport and Vicksburg on the Mississippi River?

Mr. MORGAN. Yes, sir.

Mr. SHAUGHNESSY. If this bill passes and the railroad carrier should not make a lower charge at Vicksburg than at intermediate points all along there, but would grant or equalize the low rates granted to Shreveport, it would put the Shreveport rate on an equality with the Dallas rate for the same distance.

Mr. MORGAN. I think they ought to be allowed to make a lower rate to Vicksburg.

Mr. SHAUGHNESSY. Then you indorse the reasoning of the commission?

Mr. MORGAN. I accept the decision as it has been given. If you had as much water in your State as there is in Texas you would not be here fathering this bill.

Mr. SHAUGHNESSY. This is what they say in their opinion:

Water competition is to be regarded as potential but not actual, and the testimony in this case indicates that any material advance in the rates from New York to Memphis would without doubt result in the reestablishment of active competition on the Mississippi River.

Now, you will see that there is no water competition and that it has only been something to talk about.

The CHAIRMAN. Gentlemen, this is merely a controversy between witnesses, and I do not think it leads to any good.

Mr. BARLOW. Whom do you desire the committee to hear next?

Mr. BARLOW. Mr. Chairman, we have only one other witness this afternoon, Mr. Davant, of Memphis, Tenn.

STATEMENT OF JAMES S. DAVANT, OF MEMPHIS, TENN., REPRESENTING THE MEMPHIS MERCHANTS' EXCHANGE AND THE MEMPHIS FREIGHT BUREAU, OF MEMPHIS, TENN.

Mr. DAVANT. I have not come with any prepared statement, but wish to say that the city of Memphis is very much concerned about the proposed legislation and believe it will be detrimental to the interests of that city and numerous other cities located on the waterways.

I have been instructed to appeal to your committee for relief from agitation of this sort at a time when all are greatly absorbed in the more serious and more important matters affecting the welfare of our country in the war with Germany. We feel that the very best and united efforts of all are needed in those matters and that they should not be diverted by the agitation of a question such as is involved in this bill.

We call your attention to the fact that the class rates in the Southeast have been the subject of investigation and adjustment by the carriers and the Interstate Commerce Commission for three or four years past, which resulted in the publication of rates which became effective January 1, 1916, and that the commodity rates have been and are still under investigation with a view to an adjustment under the fourth section of the act for such relief as the commission finds proper and right to give under the circumstances at the various points.

Under the treatment of those rates the commission was, we think, very exacting in their requirements of the carriers, refusing relief where they felt it should not be granted and granting it where the circumstances and conditions justified. Under that adjustment the lines to the seaboard and Mississippi River crossings and a number of other points, including Montgomery, Ala., Macon, Ga., and Augusta, Ga., which are interior points but located on navigable streams and affected by water competition, were allowed certain relief.

We believe it would be disastrous to the country at large to have that question reopened and those matters brought up again in a form which would result from the passage of this bill, and we sincerely and earnestly ask that we may be spared from that experience.

Further, as to the effect of the passage of this bill, we believe it would result in the advance of the terminal rates, and that not only these terminal points but the country adjacent thereto, which is largely benefited by the rates, would suffer.

Much has been said in this connection about the Memphis rates. The present rates are much higher than they were at one time; the rate on cotton from Memphis to New Orleans was possibly one-half of the present rate; the rate is now 27 cents per 100 pounds on cotton. Memphis to New Orleans, for depot delivery, and 30 cents per 100 pounds for ship-side delivery. These rates are as high, in the judgment of those who are competent to judge, as they may be in view of the possibility of river competition. I am speaking from the stand-

point of the carriers, and, of course, Memphis cotton dealers feel that they are as high as they should be under the conditions that exist at Memphis. By reason of these rates on cotton from Memphis to the Gulf, the seaboard, and spinning points, cotton is sold at a higher price than it would otherwise bring, and the interior points are protected by through rates and reconsigning privileges. Indeed, Memphis has found it necessary to invoke the same reconsigning arrangements to put itself on an equality with the interior shippers. The Memphis interests are now appealing to the Interstate Commerce Commission for equality in rates on cotton with points of origin in Arkansas, and redesignated to points of consumption.

The statement made as to the effect of this bill upon circuitous routes is, in my judgment, correct, and makes the measure essentially objectionable. As explained, it confines the shipper to the short line and makes it impossible to utilize the various circuitous routes, which, under present conditions, work to the short-line rates, as these circuitous routes would decline to reduce their intermediate rates in order to enjoy the privilege of meeting the short-line rates at terminal points. We have between Memphis and the Ohio River and upper Mississippi River points numerous situations of this sort, and it would be exceedingly detrimental to the shipping interests, as well as the carriers, to have the long lines eliminated. The same situation is true in reference to the Southeast and Southwest. I think, upon casual observation, the force of this objection will be recognized and that it is most undesirable to establish a rule which would bring about such conditions.

Reference has been made to the rates from the East to Memphis and the Interstate Commerce Commission's findings in reference thereto. We feel that the commission's findings in that case were justified by the facts as they existed, and that the commission was right in stating that if the rates were substantially advanced it would have created a movement by water, which would have been detrimental to the carriers.

At the present time combinations on the Ohio and upper Mississippi River crossings are possible, which cut the rates from eastern points to Memphis on several important commodities, and some movement has been created by the advance of January 1, 1916, referred to above.

We have active lines of boats operating between Memphis and St. Louis and between Memphis and Ohio River points at the proper stages of the rivers. We have also a large movement of tonnage between St. Louis and Memphis by barge, and these can not be ignored in the consideration of rates by the rail carriers. What we say of Memphis in this respect is true of all Mississippi River points, and we believe that the requirements under this bill will be disastrous in a great many instances.

That is all I can think of on the subject at this moment, Mr. Chairman.

Mr. BARLOW. You say the rate on cotton from Memphis to New Orleans is now one-half of what it used to be?

Mr. DAVANT. No; I say it is twice as much as it used to be.

Mr. BARLOW. Are there any boat lines between Memphis and New Orleans?

Mr. DAVANT. No; there are no boat lines.

Mr. BARLOW. There is deep water all the way?

Mr. DAVANT. Yes.

Mr. BARLOW. With the doubling of the rates, have the boats returned to the service?

Mr. DAVANT. Not as yet; no, sir.

The CHAIRMAN. You say the rate is 27 cents a hundred for cotton to New Orleans?

Mr. DAVANT. Yes.

The CHAIRMAN. What is the all-rail rate from Memphis to New York?

Mr. DAVANT. Fifty-four and one-tenth cents.

The CHAIRMAN. That is by all rail?

Mr. DAVANT. All rail.

The CHAIRMAN. What is the rate by the all-water route?

Mr. DAVANT. There is no movement by water.

The CHAIRMAN. You can ship from Memphis to New Orleans by water, can you not?

Mr. SANDERS. It would be the same; it is made on the same combination.

The CHAIRMAN. I understood there was no movement by water.

Mr. DAVANT. No; there has not been for some time.

The CHAIRMAN. How is the all-rail rate made?

Mr. SANDERS. It is the rail rate to New Orleans and the water rate from New York. The rail rate is 24 cents and the water rate is 35 cents, making a 59-cent rate.

The CHAIRMAN. What is the rail rate from Memphis to New Orleans—27 cents?

Mr. DAVANT. Twenty-seven cents, depot delivery; 30 cents, ship-side delivery.

The CHAIRMAN. What is the rate on cotton from Jackson, Tenn., to New Orleans?

Mr. DAVANT. I do not recall. It is higher than the rate from Memphis.

The CHAIRMAN. Both of them are by rail?

Mr. DAVANT. Yes.

The CHAIRMAN. Then the railroads are actually making the rate with reference to the possibility of water competition rather than existing water competition?

Mr. DAVANT. I understand it is based upon potential water competition.

The CHAIRMAN. That means possible water competition?

Mr. DAVANT. I understand so. Furthermore, the New Orleans rate is related to the rates to the South Atlantic ports and to the eastern points, and they are also related to the rates applying from St. Louis and East St. Louis. They are all adjusted in line with each other.

Mr. SANDERS. The effect of the operation of inland navigation on the self-propelled barges would be interesting.

Mr. DAVANT. They operate occasionally; there is no steady, regular movement.

The CHAIRMAN. What railroad do you have in mind from Memphis east and west or in any other direction that would cease to do

Memphis business if they were not allowed to charge more for a longer than a shorter haul over their own lines?

Mr. DAVANT. All of them.

The CHAIRMAN. Do they all do that?

Mr. DAVANT. If I understand your question, it is what roads would cease if they were required—

The CHAIRMAN (interposing). Cease to take Memphis freight to and from certain points.

Mr. DAVANT. I am sure the Missouri Pacific would decline to operate to New Orleans if they had to apply the terminal rate at intermediate points—

The CHAIRMAN (interposing). Does that line run from Memphis to New Orleans?

Mr. DAVANT. Yes; on the west side of the river.

The CHAIRMAN. It is practically a straight line, is it not?

Mr. DAVANT. Well, it is somewhat longer than the short line; considerably longer.

The CHAIRMAN. What is the short line? Is that the Illinois Central?

Mr. DAVANT. Yes; the Illinois Central.

The CHAIRMAN. That is the short line from New Orleans to Memphis?

Mr. DAVANT. Yes, sir.

The CHAIRMAN. What is the distance?

Mr. DAVANT. Three hundred and ninety-five miles.

The CHAIRMAN. What is the distance on the Missouri Pacific?

Mr. DAVANT. I do not recall the distance exactly, but I suppose it is nearly 500 miles. The Valley is 455 miles, and the Missouri Pacific is longer than that.

The CHAIRMAN. I thought you said it was 395.

Mr. DAVANT. That is the Illinois Central mileage.

The CHAIRMAN. Does the Missouri Pacific anywhere on its line between Memphis and New Orleans charge the interior points more than the rate from Memphis to New Orleans over the same line?

Mr. DAVANT. Oh, yes, that is true; and they will continue to do it, I am quite sure, or abandon any expectation of doing business with New Orleans.

The CHAIRMAN. As to Memphis?

Mr. DAVANT. Yes.

The CHAIRMAN. You think they would give up their charge on the intermediate points rather than bring down the New Orleans rate from Memphis to New Orleans; would that result in an increase on the freight rate from Memphis to New Orleans?

Mr. DAVANT. It would increase the rate over that line.

The CHAIRMAN. Suppose that line went out of the business and the other lines remained?

Mr. DAVANT. It would not as long as the other lines held to the rate.

The CHAIRMAN. Does not the river have any effect on either of them?

Mr. DAVANT. The river will cut a figure when all the lines withdraw or advance their rates.

The CHAIRMAN. If there is potential competition in the river where there is none actually existing, and that makes the rate what

it is, what difference would it make if there is only one railroad doing Memphis business? Would it not have to carry it at the same rate?

Mr. DAVANT. The rate would remain the same, of course. But the handling might be restricted to one line and that line be unable to furnish satisfactory service.

The CHAIRMAN. Then it would not result in increasing the Memphis rate to New Orleans if one road should cease to take New Orleans business?

Mr. DAVANT. No, sir; it would not.

Mr. McCARTHY. Mr. Chairman, I want to say I concur in the opinion expressed by Mr. Wilson and Mr. Morgan that where several lines serve common points, if the direct line were to reduce its rate, or if the more circuitous line were required to meet the rate of the more direct line without the violation of the fourth section, the circuitous line would go out of business.

Mr. DAVANT. If this bill should pass and the circuitous routes were required to observe the long-and-short-haul clause of the act they would in my judgment go out of business rather than reduce their intermediate rates.

Mr. McCARTHY. That is my understanding of your view.

Mr. DAVANT. Yes, sir.

Mr. McCARTHY. I know that between New England points and Chicago and the Mississippi River for years there has been in existence a voluntary arrangement among the carriers, what are known as the differential lines, all-rail lines and ocean and rail lines, that one of the lines would handle the business at a certain less figure than another, and yet all the roads are still in business. The same thing applies to the passenger business, and none of them has yet gone out of business.

Mr. DAVANT. I do not understand that any of those lines operate with different rates between the same points by arrangement, unless it was river-rail or lake and rail, or something of that sort. If there were differentials between competing lines, it involved some question of that sort.

Mr. McCARTHY. Whatever the reasons might be for the lower rates, as I understand your theory, it would have the effect of driving the indirect line out of business.

Mr. DAVANT. It would, certainly, unless the direct line was incapacitated to handle the business.

Mr. McCARTHY. It has not had that effect in years.

Mr. DAVANT. They have never had such a condition.

Mr. McCARTHY. Under the present law the indirect line is permitted to operate at the short-line points without prejudice to its intermediate business. Do you understand—take, for example, the ocean and rail lines operating through the north Atlantic ports, through the Gulf ports, and Kansas City to Colorado and on to Utah. The first-class rate via that route is 20 cents a hundred less than the rail rate, and I do not understand that the all-rail lines have gone out of the Utah business.

Mr. DAVANT. I think I stated if there were differentials they probably involved water hauls.

Mr. McCARTHY. But whatever the reasons for the differential may be, admitting it does exist, the fact remains that it did not have the

effect and never has had the effect of driving the higher rate lines out of business. Is that not true?

Mr. DAVANT. I am not prepared to answer that question. I am not familiar with the Utah situation, but I would venture the statement, if the conditions were the same over the lines that were operating different rates there would probably not be a movement over the line which held to the higher rate.

Mr. McCARTHY. We are dealing with facts.

(Thereupon, at 5.30 o'clock p. m., the committee adjourned to meet Thursday, March 28, 1918, at 10.30 o'clock a. m.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Thursday, March 28, 1918.

The committee met at 10.30 o'clock a. m., Hon. Thetus W. Sims (chairman) presiding.

STATEMENT OF MR. FRANK T. BENTLEY, 208 SOUTH LA SALLE STREET, CHICAGO, ILL.

Mr. BENTLEY. My name is Frank T. Bentley, traffic manager of the Illinois Steel Co.; the Minnesota Steel Co. of Duluth, Minn.; the Universal Portland Cement Co.; speaking also for the Tennessee Coal, Iron & Railway Co., of Birmingham, Ala.; member of the National Industrial Traffic League, of the Chicago Association of Commerce, and of the Illinois Manufacturers' Association.

The CHAIRMAN. You appear in opposition to the bill, as I understand it?

Mr. BENTLEY. Yes.

The CHAIRMAN. Mr. Bentley, you may proceed in your own way.

Mr. BENTLEY. The Illinois Steel Co. is a heavy tonnage manufacturing institution where volume of tonnage and the relationship and volume of rates on their business is a very important factor. Our tonnage will run in excess of 30,000,000 tons a year, or more than the entire amount that the Southern Pacific system handles. Connected with our institutions are steamship lines and also some standard railroads, so that I have, perhaps, a view of all the different angles.

At the present time the transportation facilities of the United States are short, in my estimation, to about 80 per cent of what is necessary to take care of the business of the country, with the result that every facility, every route, and every car that is obtainable is necessary to the continuation of our business. We are operating almost exclusively on United States or allied war business. We find that we have lost control of our business. We are at the mercy of circumstances. We are shipping British shell steel, for instance, from Duluth, Minn., to England, via Galveston and New Orleans. Our coal business is subject to pool distribution. We do not know where we are going to get or how we are going to get it until it arrives, and much of it comes by routes where there are even no rates in effect, but it has to be protected by the Government because

it is their diversion and not ours. We find the short lines are frequently and almost generally congested, driving us to the use of any line available, however long or circuitous it may be; and with that we have great difficulty in operating our mills through inability to get sufficient transportation.

In the territory I represent, where we have probably the greatest amount of railroad transportation of any district in the world, we run into thousands and thousands of these cases of relief from the long-and-short-haul clause which, if rigidly enforced, would, in my judgment, stop our company from doing business. For instance, there are a number of lines that run from Chicago to St. Paul and Duluth, and to those points the longest line is the Iowa Central and M. & St. L. route; next to it is the Rock Island. The Rock Island is a short line from St. Paul to Kansas City, but a long line from Chicago to St. Paul. We have to have fourth-section relief all through Iowa and southern Minnesota in order to handle the business of those terminals. The same is true of Chicago and St. Louis. We have even had to use routes as roundabout from Chicago to St. Louis as via Indianapolis, using the Pennsylvania system, on account of inability to secure cars or transportation from the direct lines. That involves hundreds of violations of the fourth section in and of itself. The same is true of the Missouri River points, and in almost every direction we run into these violations of the fourth section, and if we had to stick to the direct line and could not use these circuitous routes under present conditions, I do not see how we could operate at all. A sample of that occurred not long ago—

The CHAIRMAN. I do not want to interrupt you, but I do not understand that these are violations. You keep referring to them as violations. You mean in spirit, but not according to the letter of the law?

Mr. BENTLEY. They are all protected by fourth-section permission orders from the Interstate Commerce Commission, or they are pending before that body.

The CHAIRMAN. Then they are not violations.

Mr. BENTLEY. They are departures. I did not mean to use that in an offensive sense.

The CHAIRMAN. They would be violations if you had to do that after such a bill as this was enacted.

Mr. BENTLEY. If we could not do it after the bill was a law, I do not see where we would get off. The South is in the same condition. For instance, take our export rates to the Gulf. To make competitive rates to Europe and other foreign countries the rates to the Gulf are lower than to intermediate territory. A sample of that condition came up very recently on a large amount of steel which we were called upon to move to the southeast Atlantic ports for export, and we found the lowest rates in effect from Chicago were via St. Louis down the west side of the Mississippi River to Memphis, and then east from Memphis to Charleston, Savannah, and Jacksonville, although the direct line would have been through Cincinnati. Under the present Government control those matters are being equalized. They are taking those shipments by the direct lines protecting the current tariff rates because the railroads themselves are taking that action for their own benefit and for efficiency.

The CHAIRMAN. I do not think you need have any fear that Congress will immediately nullify the act which we have just passed for the best and fullest use of railroads during the war.

Mr. BENTLEY. It has been a question in my mind where this act would lead and whether it would not lead into a conflict of that kind. There never has been under any conditions I can recall in 33 years of transportation experience, where it has been, even under the mileage scale which is supposed to be the dead line based on distance entirely, or can be observed. In the Central Freight Association, which is a notorious instance of that, it is based on the mileage scale, but they found there they had to make the rates equalized to the various junction points and then observe those rates to the intermediate territory until the mileage would make less. In those adjustments and in the entire adjustment between Chicago, the Mississippi River, and the Atlantic seaboard, for instance, they have worked out perhaps the most systematic, scientific basis of rates there is in this country. Those rates primarily are based on a terminal charge plus the road haul added to it. That is true of the rate from Chicago to New York, where 6 cents was allowed for the terminal charge before the road-haul rate was made, and in the recently decided case of the cement investigation, running from the Alleghenies to the Rocky Mountains, the Interstate Commerce Commission set a basis of rates arbitrarily to various junction points, but with a basis of mileage to the intermediate points, and in that they used a basis of 2.8 cents per 100 pounds for the terminal. But there are variations from the long and short haul clause and must be as long as the railroads are located as they are.

They are all a going thing to-day. If we had started out with a scientific proposition of making railroads run in certain parallel directions and crossing each other we might have worked out a flat mileage basis or a flat short-line proposition.

I was somewhat interested in the discussion the other day of the question of water versus rail. Perhaps, having had something to do with the location and creation of three industrial cities, I might add a word which might be of interest there. Our corporation has built the cities of Gary, Ind., Morgan Park, Minn., and Ojibway, in Canada. We have felt, as a commercial proposition, that in order to select an appropriate location there were certain factors which had to be brought together in correlation in order to make it a success. The first consideration is plenty of good water for the manufacturing institution; not necessarily for navigation, but for use in its work. You must select a point where certain raw materials can be best centralized for operation of the plant. Then you have to have a market. You have to have a population to consume it. You must have a population which can do the work, and you must have a territory surrounding that district that will raise enough food to take care of the people. Those are the primary considerations which surrounded the creation of those three cities. We utilize the Great Lakes as a water proposition for a great deal of ore and some stone and a little coal; considerable coal in the Northwest. We found on the Lakes, where there is no tide and the water is always the same level, that by the creation of expensive terminals with special handling machinery we can make large volumes of

tonnage of that kind pay. But my personal experience on water transportation, generally speaking, is that I can do better by rail than by water. That, I think, Mr. Chairman, is all I care to say.

The CHAIRMAN. Do you mean by that you can make better rates per se by rail than by water?

Mr. BENTLEY. The trouble I find in attempting to use inland waterways is the fact that the industries of this country are not located for it. Their plants are not on the water so that you can load direct to and from the boat. You must load on a car, switch it to some point, and then transfer it to a boat, and when you get to destination you have to unload it again, perhaps put it on a car or else dray it, and it is the terminal expense that eats up the water transportation. I have tried, for instance, from Chicago to New Orleans, to use water many times, and I have never been able to make a success of it. We do use the water from the Pittsburgh district down the Ohio River and Mississippi River on coal and some little steel, but not very much, for certain industries and lines which are so located that they can reach the water quickly and cheaply. Some of the mines in that district are capable of loading direct from their tipples onto a barge. But from Chicago I have never succeeded, to amount to anything, in utilizing water even up and down the Great Lakes.

The CHAIRMAN. What you have said is exactly my own opinion and has been for a long time; but there seems to be a policy prevailing throughout the United States, speaking generally, to develop waterways for transportation of traffic, and what has seemed to me to be an evil, or a tendency toward an evil, has been to create a potential water route or water competitive line, which would not, in fact, be used for transportation business at all, but would only be used to force the railroad companies to actually do the business, but to do it at less than a just and remunerative rate. Now, has not some such thing as that actually taken place?

Mr. BENTLEY. There is no question but what water has had an influence on certain railroad rates.

The CHAIRMAN. I mean not actual water transportation, but this so-called potential water competition.

Mr. BENTLEY. That also has had some effect. For instance, take the Erie Canal, on which hundreds of millions of dollars have been spent. I have always felt that if the same amount of money had been invested in a first-class railroad from Buffalo to New York, operating 12 months in the year instead of perhaps 7 months, they would have obtained real, live competition instead of a rather potential one.

The CHAIRMAN. What I understand to be transportation is the actual movement of products. You heard Mr. Devant, of Memphis, say here a few days ago that the railroad on the west side of the river—I believe it was the Missouri Pacific—and the one on the east side of the river was making a rate to New Orleans based on water competition, but admitted there was no water competition, because, while there was water, there were no boats. Now, why should those two railroad companies be required by a mere assumption that possibly some boat may some time or other get to carrying cotton, which is not being done to-day, to take that cotton and do that business at less than a just and reasonable rate, thereby reducing their normal

and proper earnings to that extent, when you have not increased transportation facilities because there is no water transportation there?

Mr. BENTLEY. In that territory down there I imagine under present conditions the railroads would be very glad if there was water transportation from Memphis to New Orleans, because it would supplement the present shortage of transportation in this country. But up until the last few years, generally speaking, the rail facilities of the country have been equal to the task of taking care of the country's business, and rather than create competition for themselves, as I understand it, they voluntarily made these rather reduced rates.

The CHAIRMAN. That spirit or that purpose on the part of the railroads is not really to increase transportation facilities, but to prevent water competition?

M. BENTLEY. It was to conserve their own revenues.

The CHAIRMAN. But not their normal revenue?

Mr. BENTLEY. No.

The CHAIRMAN. Because until there was actual water competition neither of those roads, in justice to itself, could afford any such rate, and the making of such a rate was to prevent the building up of water competition.

Mr. BENTLEY. I think you will find there is another phase of that, Mr. Chairman. Take the movement of cotton which goes to New Orleans. It is very largely an export movement. The ships charge a higher rate from New Orleans or Galveston than they do from Charleston or Savannah or New York or Baltimore; and part of that reduction, I think, is due to the fact they have to add together the two factors—the ocean transportation and the ocean insurance and their rail rate—in order to make a competitive rate which will move business to New Orleans as against the cross-country rate to Norfolk, Va., say, plus the ocean rate.

The CHAIRMAN. I have never thought it was a wise policy for Congress to adopt to make improvements at public expense upon the waterways which are not for the purpose of actually transporting traffic, but simply to force some existing railroads to afterwards carry the traffic at a rate which is compelled by the mere menace of water competition.

Mr. BENTLEY. Well, that is a competitive condition entirely.

The CHAIRMAN. It is a competitive condition theoretically and not an actual one. I do not think a railroad ought to be permitted to make a rate that is relatively a losing rate to them.

Mr. BENTLEY. I do not think they do that.

The CHAIRMAN (continuing). In order to prevent actual water transportation, if the water is there and the transportation is being done and the traffic is actually being carried, and I suppose that is the case with reference to these Pacific and Atlantic ports; but I have in mind the policy of making large appropriations to improve so-called navigable rivers, not for the purpose of navigation and not for the purpose of actual transportation of traffic, but simply to force the railroads to take the traffic cheaper than they as railroads can afford to take it.

Mr. BENTLEY. My opinion is that the railroad has the first call over the water for the reason that possibly 10 per cent of the wealth of the

United States is in railroads, and possibly 10 per cent of the population of the United States is dependent on those railroads for a living, and the money is actually invested and it is a going property. It is on the ground and has to be kept there and has to be maintained, and I think they should have the first call.

The CHAIRMAN. You mean they are entitled to it because they have the best facilities and everything of that sort?

Mr. BENTLEY. I think so. I think it is to the interest of the people at large that that should be so.

The CHAIRMAN. Why should they be forced by legislation of Congress to do some business for less than the normal rate in order to prevent a possible competitor from doing business which they ought not to do?

Mr. BENTLEY. I do not understand they are forced to do it. It is a voluntary act on their part, on the fear of losing the rail business to the water if they do not make the rate lower at certain points.

The CHAIRMAN. Do you not think the less unremunerative business they do the better it is for them?

Mr. BENTLEY. I do not think they are doing any unremunerative business. I do not think they are going below cost.

The CHAIRMAN. No; but if they are doing it at cost, or just a fraction over cost, no railroad on earth would ever exist if all of its business was of that kind.

Mr. BENTLEY. No, sir; that is true, but at the same time there is a margin where, as a merchandising proposition, a man can afford to do some business at a very low figure in order to keep his average.

The CHAIRMAN. Yes; as a merchandising proposition.

Mr. BENTLEY. Yes.

The CHAIRMAN. And that is brought about usually by competition.

Mr. BENTLEY. Yes. We have very little competition now. What will come with the close of the war, I do not know; but at this time the competition is about nil.

The CHAIRMAN. It seems the railroads have been contending that if they did not get to do this small amount of business, which is small in comparison with their other business, for less than it is worth, they would become bankrupt and go into the hands of receivers and things of that sort.

Mr. BENTLEY. There is another feature in connection with that in which the public is interested as well. Take our situation in Chicago. We are 1,000 miles, in round figures, from the ocean. We have to compete with mills that are closer to the ocean, with lower freight rates, and we are subject to these competitive conditions. If we go to the Gulf, the ocean rates are higher than if we go to New York. If we go through to the Pacific coast for export to China and Japan and the Philippine Islands, which are becoming one of our largest sources of foreign commerce, we immediately come in competition with the boats that sail from New York and these eastern and Atlantic ports that go through the Panama Canal and the Suez Canal, and it is necessary at times to make lower rates for that class of business than the ordinary domestic rate would be in order to give the roads that serve Chicago a chance to participate in some of that traffic which, while it may not be 100 per cent of profit, as compared with their local business, would still give them

a profit; and in ordinary times, when they have spare capacity to serve the public with and there is not a shortage of transportation, the mere fact they can fill up their trains with that class of business is a source of profit to them and a help out to the industries. It also in that event spreads the competition of selling more generally, and our prices then are competing with other prices and other mills and other districts which gives the people a better chance for reasonable prices on the goods they buy.

The CHAIRMAN. That character of competition is actual and not imaginary?

Mr. BENTLEY. That is actual competition.

The CHAIRMAN. And not simply potential?

Mr. BENTLEY. No, sir.

Mr. STEPHENS. It would not be if the railroads were not allowed to make a rate to New Orleans, for example, that would permit you to get into a certain market by water and by ocean transportation; otherwise, of course, your business could not be carried on at all in that direction.

Mr. BENTLEY. We would be out of it.

Mr. STEPHENS. You would be out of it and competition would be lessened, and thousands of people employed in the industries would be affected; and, in fact, it would reach down and affect the whole population.

Mr. BENTLEY. I think the condition we should strive for to-day is the greatest flexibility possible; nothing that will crystallize or harden any condition, because we can not tell now, under present conditions, from day to day or from week to week what we are going to face next. The greatest elasticity in our commercial system and transportation system is the ideal thing, as I look at it now.

The CHAIRMAN. You do not put the opening up of foreign markets and competing in foreign markets on a parallel with our domestic commerce between our different cities here?

Mr. BENTLEY. To a certain extent. I have always felt, Mr. Chairman, the proper way for a railroad company to make their rates would be to build up a normal system of rates which is primarily based on distance but not measured by the inches of a yardstick, as though there were no special conditions to be considered. Now, having arrived at what is a fair and reasonable rate for standard service, service standing by itself measured by the haul, then those rates should only be amended or changed by the special conditions which creep in at different places. To work that theory out you have to have a certain amount of elasticity and a certain amount of disregard for fourth-section conditions.

The CHAIRMAN. Without the provision of the fourth section it is a rigid long-and-short-haul proposition in the sense that you are not to base it on mileage but you shall not give the point farther from the point of shipment a cheaper rate, going over the same railroad and in the same direction, than you do a nearer point; but it is not based strictly on distance at all. Now, that is the general law, and the fourth section, without that provision in it, provides what is the general law, and is simply a declaration by Congress that this is the general, normal condition, and that that is what ought to be done; but in special cases the commission might, upon application, author-

ize them not to obey the general law, as we might call it, or to follow the general law.

In that event the case must be special, and being special the railroad itself is not permitted to judge of whether it is special or not; but the Interstate Commerce Commission must judge of that, and therefore it seems to me that all that section was intended to mean was not that it would prevent anything of this sort absolutely and in all cases, but that in order for any railroad to charge less for the further haul the conditions must be special and exceptional and unusual, and therefore in that sense temporary. Now, it seems to me that the railroad companies and the port terminals have regarded the exceptions as the general rule, and the general rule as the exceptions; I mean, in practice and application. Do you not think that was the evident intention of Congress, or otherwise they never would have amended the act?

Mr. BENTLEY. My conception of that has always been that Congress in legislating intended that the initiative at least in this matter should be left to the railroads to determine what is a special condition, but they had to make a showing and proof and then let the Interstate Commerce Commission be the judge and decide. I have felt always that that is an ideal condition, which is furthering the commercial interests of the country without any hardship. Take the illustration we were talking about the other day of the short line vs. the lone line. It is manifestly true that either the short line or the long line has to set the rate. Now, if you go on the theory you have to make a reasonable rate per se for a given distance, that town then has a reasonable rate and it has no complaint. Take the illustration of Des Moines that we were speaking of. If the other railroad held up to the higher rates, it would make a higher rate to people at an equidistant place on the Santa Fe because of the Santa Fe having a more direct line to Kansas City, which is an important manufacturing point. I do not see where it affects the man in Des Moines. He has all that is coming to him.

The CHAIRMAN. You would not call that condition special or temporary or exceptional?

Mr. BENTLEY. That is the condition, and whether it is special or not it ought to be recognized, I think, by Congress.

The CHAIRMAN. It is a general condition so far as that particular line is concerned, and will continue as long as the two lines operate?

Mr. BENTLEY. Yes; I think so.

The CHAIRMAN. And can not be considered in that sense exceptional?

Mr. BENTLEY. If you put in force this rigid law and the Great Western is forced out of the Kansas City business, I do not see where the man in Des Moines is going to be helped.

The CHAIRMAN. The law itself is rigid in general terms, but there is a proviso providing that in special cases the Commission may authorize a variation, but it certainly does not mean that the Commission could create a great number of special cases, and those special cases should be continuous for all time to come until the exception became the normal policy of the road.

Mr. BENTLEY. As a practical proposition it works out that way, and unless that elasticity is given, we are going to shorten up the

facilities of this country to a point where it would bring on an industrial panic.

The CHAIRMAN. Oh, of course, sudden changes always have that tendency. I am talking about what Congress meant when it said special cases.

Mr. BENTLEY. I can not answer that.

The CHAIRMAN. And provided that the railroads should not determine that, but the Interstate Commerce Commission upon application should authorize, and I should think that special means exceptional and temporary, and I would not think they could make it a general rule. In construing this law we ought to repeal the proviso entirely or else limit it some way so that it means what it says, that the cases are exceptional. If we go along here taxing the people to improve waterways and then turn right around and say that every railroad in the country that competes with those improvements may charge a rate that will prevent those improvements ever being utilized—

Mr. BENTLEY (interposing). As I have said before, I think the railroads have the first call, because the money is invested there and it is not invested in the water. This is a sample, as a practical matter, which occurred within the past 90 days, again going back to the Santa Fe: That line was so congested with business at Kansas City that it could not operate to Chicago at all. It turned over a great many hundreds of cars of merchandise of various kinds to the Great Western Railroad, and the longest line from Kansas City to Chicago pulled the business because the shortest line could not do it.

The CHAIRMAN. That was a special case and that road had not been doing its greatest volume of business along the line of special cases. The railroads have now been unified and are under the control of the Government and are operating as one system, as I think they ought to not only in time of war but at all times. I think that has been one of the things that has been the cause of building up these congested points where railroads are willing to spend millions of unremunerative dollars to compete with other railroads going to those points. I think that situation ought to be relieved and I do not see how that is going to be brought about by allowing the railroads to do an unremunerative business to those points, and therefore necessarily, in order to get reasonable earnings upon the capital invested, charge a higher rate on remunerative business than they would otherwise have to charge.

Mr. BENTLEY. I am of the opinion that when the railroads are turned back 21 months after this war is over they are going to be a very different lot of railroads, and they are going to be started in under their ownership again under very different conditions, and I believe that Congress will be called upon for additional legislation to put them in an entirely different shape than they were when they were taken over by the Government. I think they should be altered in many respects and I hope that Congress will fix it so that while it will still preserve private ownership, it will permit these railroads to exist under a fair basis, because if 10 per cent of the capital wealth of this country is not remunerative, that means the difference between good times and bad times for everybody in the United States. But Government control certainly is never going to permit reckless build-

ing of roads or reckless investing in roads again. In other words, they will supervise, I believe and I hope, the building of new lines, confining them to where it is necessary, and will supervise the securities issued by those lines so there will be no excessive expenditures in many ways. I believe when these roads go back you will face such different conditions than those which existed in the past that we are not in position at this time to foresee what actually is going to come out of this thing. I believe you ought to let things pretty well alone and just as they are now, under Government control, and let the developments of the next four or five years bring it out, because in my judgment we will have at least that length of time.

The CHAIRMAN. Is not your faith and belief in new legislation and beneficial legislation based largely upon the absolute necessity of such legislation?

Mr. BENTLEY. I see it that way.

The CHAIRMAN. I think you are exactly right about that and that is one reason I was not in a big hurry to rush the railroads back pell mell after the war was over into the old conditions, both on account of their own benefit and the benefit of the country and the investing public. Congress has limited it to 21 months after the war and none of us knows how long the war is going to last and the 21 months may give us sufficient time, but I certainly agree with you that old conditions should not continue, and it is not for the benefit of the public or the railroad investors that they should continue. I have gone into this examination with you at some length because I value what you say. You have had an opportunity to know because you represent one of the largest industries in the United States. I believe the Illinois Steel Co. is part of the United States Steel Corporation?

Mr. BENTLEY. Yes, sir.

The CHAIRMAN. When you spoke of a tonnage of 30,000,000 tons you had reference to the Illinois Steel Co. only?

Mr. BENTLEY. Yes, sir.

The CHAIRMAN. And did you mean inbound and outbound tonnage?

Mr. BENTLEY. We have a capacity of about 7,000,000 tons of steel, which requires in the neighborhood of 25,000,000 tons of inbound products.

The CHAIRMAN. Then, how much outbound?

Mr. BENTLEY. About 7,000,000 tons of steel, which requires about that much inbound material in order to make that much outbound business; in other words, $3\frac{1}{2}$ or 4 tons of raw materials to make 1 ton of steel.

The CHAIRMAN. And therefore your total tonnage that you are directly concerned in is about 30,000,000 tons?

Mr. BENTLEY. A little over that.

Mr. ESCH. Mr. Bentley, since war began, of course, the sixth section of the interstate commerce act giving the shipper the right to route freight has been practically abrogated?

Mr. BENTLEY. He still has the right, Mr. Esch, but it would not be good sense or good policy for him to stand on his right under present conditions, and I know every shipper has carefully acquiesced in any diversion the railroads have made along that line.

Mr. ESCH. After business again becomes normal and the sixth section comes into its full vitality, that would make the long-and-short-

haul clause absolute and not in any way affect the privilege of the shipper in routing under section 6.

Mr. BENTLEY. No; the longer lines would have a higher rate, and under such conditions it would reduce the facilities, and the shipper would have to confine himself to the line which had the lower rate, and it would be impossible, I think, in a concern like ours ever to secure a car supply or movement if we were confined to one route.

Mr. ESCH. The shipper routes his freight over the longer lines because the longer line may have better terminal facilities?

Mr. BENTLEY. That is also true in other directions. The longer line may be giving the best service, it may have better power, industries may be located at its terminals, and the shipper may get better service over the longer line than over the short line.

Let us go back to the Santa Fe situation, in reference to the city of Chicago. The city of Chicago extends over 30 miles. Take industries like the one we have on the North Side, with our location on the St. Paul road. We can get better service to Kansas City direct over the St. Paul Railroad from our plant than we could get by switching that business or teaming down to the Santa Fe and shipping it over the short line. It is almost a necessity for us to use the longer line in that case.

Mr. ESCH. Unless you had the privileges granted under section, and the fourth section remains absolute, would it not result in congestion in the terminals of the short line?

Mr. BENTLEY. Absolutely. If all the business from Chicago to Kansas City had to go over the Santa Fe road, as the Santa Fe has very few terminals in the city of Chicago, practically all the industries being located on other roads, if they tried to switch that business it would congest the Chicago switching terminals, and if they tried to team it it would congest the streets of the city of Chicago so that they could not turn a wheel.

Mr. H. T. BARTINE. Mr. Chairman, I would like to ask Mr. Bentley one or two questions, with the permission of the committee.

The CHAIRMAN. Without objection, you may proceed.

Mr. BARTINE. Mr. Bentley, you do not represent any railroad, do you?

Mr. BENTLEY. No, sir.

Mr. BARTINE. You were not present at the hearings before the Senate committee, were you?

Mr. BENTLEY. No, sir.

Mr. BARTINE. Then, of course, you did not hear Mr. Winchell say this was purely a transportation proposition, and that these industries had nothing to say about it?

Mr. BENTLEY. No, sir. But I would like to say this, that I think I have something to say about it.

Mr. BARTINE. I am giving you the railroads' viewpoint. You think you have something to say about it. Do you think you are entitled to a preferential rate as to your business, which would not come to you normally?

Mr. BENTLEY. No, sir.

Mr. BARTINE. I understood you to say you found the railroads were rendering very much better service than the water carriers.

Mr. BENTLEY. In my business.

Mr. BARTINE. If that be true generally, the railroads have nothing to fear from the water carriers.

Mr. BENTLEY. My conditions are not everybody's conditions.

Mr. BARTINE. If it were generally true?

Mr. BENTLEY. That is pretty broad.

Mr. BARTINE. You say it is true in your business. If it were generally true, that would follow, logically, would it not?

Mr. BENTLEY. Yes, sir.

Mr. BARTINE. In reply to the question of a member of the committee you spoke of your inability to meet the water carriers at St. Louis unless you could get a rate that would enable you to do it.

Mr. BENTLEY. At St. Louis?

Mr. BARTINE. I mean at New Orleans.

Mr. BENTLEY. Let me straighten that out. The lowest ocean rate to Europe is generally from New York. There is a thousand-mile haul from Chicago to New York. The water rate on the ocean, plus the insurance rate charged, plus the inland haul to New York becomes the short-line rate, and the short line sets the rate.

I could not go through New Orleans with a higher rate to New Orleans locally than to New York, plus the higher steamship rates from there, unless the ocean carrier and the rail carriers jointly or severally made a rate which would compete with the other route. I would not call that a preference to me. It is an equalization of the rates, and it enables me to do the business.

Mr. BARTINE. I do not think that is responsive to the question I asked you. I understand that; but the simple point is that you could not get into New Orleans with your product unless you could get a rate that would meet the water rate.

Mr. BENTLEY. This other rate.

Mr. BARTINE. The water rate you are speaking of.

Mr. BENTLEY. Yes.

Mr. BARTINE. And the products you deal in are not turned out in New York?

Mr. BENTLEY. In Chicago.

Mr. BARTINE. Then they are carried by rail to New York. You would have to go all the way by rail from Chicago to New Orleans?

Mr. BENTLEY. Yes.

Mr. BARTINE. Suppose halfway between those two places there is another plant engaged in the same business you are engaged in, perhaps, on a smaller scale. Would you think that, in order to jump over that plant and get the business at New Orleans you ought to have a lower rate from Chicago than the other plant is receiving?

Mr. BENTLEY. That depends practically on whether the railroad desires to do that. We can not demand that they make a rate.

Mr. BARTINE. That is the point involved in the long and short haul.

Mr. BENTLEY. Let me illustrate that: Back of 1915, before the war, when you had lower rates to the Pacific coast than to the interior, the Illinois Steel Co. was 1,000 miles inland and closer to the Pacific coast than other steel mills at Pittsburgh, Buffalo, Bethlehem, Steelton, Cleveland, and New Castle. All those other steel centers were closer to New York, and we were closer to the Pacific coast than they were. And the rate by way of the steamship lines

from New York to San Francisco and Los Angeles and Portland plus the rates from those interior points made a rate so low that the railroads could not compete with them, and the Illinois Steel Co. had no business on the Pacific coast for several years. It was absolutely shut out of that business, which deprived the Pacific coast of that amount of additional competition and did not do you a particle of good. We were punished and you were not helped.

Mr. BARTINE. I have some question as to whether it did us any good or not, but let us consider your own position. Did you not always claim that, notwithstanding the water competition from New York, you were 1,000 miles inland, and you had a 1,000-mile shorter haul, and that you should not be charged any more than the charge from New York?

Mr. BENTLEY. We always took this position: We had no right in the matter. I have no right to ask the roads to make rates from Chicago to the Pacific coast to meet the New York-San Francisco water situation. I could not come down to the Interstate Commerce Commission and ask them to force the roads to reduce the rates. If the rates were reasonable, ordinarily speaking, the carrier has the selection to make rates to meet that competition of its own volition, but I have no rights in that regard as a shipper at all.

Mr. BARTINE. Was not Chicago always represented in those intermountain cases?

Mr. BENTLEY. I do not know.

Mr. BARTINE. I do; I was there. For your information, I will say your people always did claim they ought to have as good a rate to the West as New York had, because they had a shorter haul.

ADDITIONAL STATEMENT OF MR. LEWIS J. SPENCE, DIRECTOR OF TRAFFIC, SOUTHERN PACIFIC LINES, NEW YORK, N. Y.

Mr. ESCH. I would like to ask Mr. Spence one question. Mr. Spence, I want to ask you the same question I put to Mr. Bentley. Suppose we make the long-and-short-haul clause absolute. What effect would that have upon section 6, which gives the shipper the right to route his freight?

Mr. SPENCE. It would very greatly circumscribe the privilege which section 6 was designed to accord the shipper, because it would limit the routes by which he could exercise that privilege. He would be confined to one short line and perhaps another line not exceeding, under the practice of the commission, 115 per cent of the short route.

The CHAIRMAN. Whom would you like the committee to hear next, Mr. Barlow?

Mr. BARLOW. I would like the committee to hear now Mr. Glover.

The CHAIRMAN. We will be glad to hear Mr. Glover.

STATEMENT OF MR. H. W. B. GLOVER, RICHMOND, VA., TRAFFIC MANAGER OF THE VIRGINIA-CAROLINA CHEMICAL CO. AND MEMBER OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

Mr. GLOVER. Mr. Chairman, my name is H. W. B. Glover; my residence is Richmond, Va. I am a member of the committee of the National Industrial Traffic League and am traffic manager of the

Virginia-Carolina Chemical Co., who are shippers of fertilizers through the South. If the present exception in the long-and-short-haul clause of the act to regulate commerce were to be removed, I presume the South would be that section of the country where it would be most urgently felt. In fact, it is my recollection that the Interstate Commerce Commission have stated in their investigations that the departure from the absolute observance of the long-and-short-haul clause was more pronounced and resulted in a very much greater number of such cases in the South than in any other section of the country.

After the changing of the act, with the elimination of the words "under substantially similar circumstances and conditions," it left to the commission the decision as to what departures should be permitted, and they issued an order requiring a readjustment of rates in the South, prescribing the extent to which departures would be allowed.

Under that order a committee composed of a very large number of experienced traffic officers of southern lines convened. It was required by the order that they should make a report in a given time, and according to my best recollection and belief that given limit of time was not sufficient to work out the difficulties of the problem, and it had to be extended on two or possibly three different occasions, with the result that no new issue of tariffs was possible until on the 1st of January, 1917, when the class rates were published on the new basis prescribed by that original order of the commission.

That change of ratings increased the freight costs to what were known as depressed points, or water-affected points, and reduced the rates to a great many intermediate local points where there was no actual, initial, or delivery competition, except by the lines reaching that local point.

It created a great deal of alarm as to what that might result in. As it has worked along, and it has thus far been in effect on the class goods only, I believe people have gotten more accustomed to the conditions, and they are getting to understand it better.

We have in the South, reaching the Atlantic and Gulf States, three important trunk lines—the Atlantic Coast Line, the Seaboard Air Line, and the Southern Railway.

The Southern Railway starts at Washington, D. C., and operates very extensively through the South. It also has a line from the port of Norfolk, Va., from the city of Richmond, on the James, and reaches Charleston, Savannah, and Jacksonville on the Atlantic coast, and some Gulf ports.

The Atlantic Coast Line and the Seaboard Air Line originate at Norfolk and Richmond and have lines reaching Wilmington, Charleston, Savannah, and Jacksonville, and also a good many interior points. They have been granted relief as against water competition to the Atlantic ports and they carry a great many rates to intermediate points on a higher basis over rail or water, through their steamer connections, or by rail through their connections at Richmond and through Potomac Yards than they do to the Atlantic ports. It seems to me they would have to abandon their Atlantic port business unless commerce could adjust itself to a very much higher rate than the steamer lines grant, if they were compelled to

carry all their intermediate freight at a charge no higher than the rate to the port points.

There is a condition in there that struck me as one that might very well illustrate the result of a strict enforcement of a long-and-short-haul clause. It is in relation to the business of a railroad that commences at Augusta, Ga., and runs to Madison, Fla. It shows how a long-and-short-haul feature of that kind would work.

That road is not very old, but it is in the hands of a receiver. That fact might invite the question. Is it not one of the unnecessary roads we heard discussed? Still, it is there, and it is trying to do some business.

That road commences at Augusta, Ga., and the all-rail rate from New York to Augusta, Ga., published in Agent Cottrell's I. C. C., 127, on first class—dry goods, boots, shoes, etc.—is \$1.09 per hundred pounds. To its local stations all rail it has rates, for instance, of \$1.45, \$1.48, \$1.50, and \$1.56, according to the location of the station. A few miles out of Augusta it reaches a junction point called St. Clair, where it is crossed by the Savannah & Atlanta Railway, and at St. Clair is carries a rate of \$1.48.

Running along a little farther it meets the Central of Georgia at Midville, and because of the proximity of Savannah and the rail and water rate operated through Savannah, the all-rail rate to Midville is \$1.26. That is because the all-rail lines have an established differential. The rail-and-water rate to Midville is \$1.20; a differential of 6 cents higher establishes the all-rail rate of \$1.26.

At the city of Swainsboro it again meets competition, and there the rail-and-water rate is not as low as at Midville, and the \$1.50 all-rail rate at Swainsboro does not affect their local points.

At Stillmore they make a rate of \$1.26 because of the competition of the Savannah water line, which makes the rail-and-water rate \$1.20, and they add 6 cents more.

Then at Hazlehurst, Ga., it crosses the Southern Railway and the freight rate is again \$1.26. At Douglas, Ga., it crosses the Atlanta, Birmingham & Atlantic Railroad from Brunswick, and there again the rate is \$1.26. Then at Willacooche, Ga., it crosses the Atlantic Coast Line, where again the rate is \$1.26, and so on, until finally it gets to Nashville, Ga., where the rate is \$1.53 on first class, and when it reaches Madison, Fla., the rate is \$1.39.

Mr. HAMILTON. Is Madison, Fla., the terminus of the road?

Mr. GLOVER. Yes, sir.

Mr. STEPHENS. Is the terminus at the water?

Mr. GLOVER. No; it is an inland town. That railroad would have connections, or would receive its business from its connections at Augusta, Ga., if it could operate over its entire length of line in the haul of traffic originating at the eastern points—New York, Philadelphia, Baltimore, and other eastern points—where the New York rate is \$1.09. If it had to observe a rate no higher at the less competitive points on its line, it would have to abandon business at competitive points or maintain a rate to all intermediate points no higher than the rate that is forced by the water competition, of \$1.26.

If that had to be done by the Georgia and Florida railroads, and they would have to withdraw from competition to a great many of their junction points, which is the biggest business that is on the

line—the local stations are very small—it would have to accept business all along the line at any place where it was given to it, and that would make no lower local station rates. It would have local hauls with their road, cut up into little sections, and provide limited facilities for the merchants who lived on the local line.

I can not see how that would do it any good, and I can not see how it would hurt them by letting them continue to enjoy this business under the present fourth section as regulated by the Interstate Commerce Commission. If the fourth section was made ironclad, they would get not as good a rate adjustment as they get to-day, because they would pay full locals from all junction points and their situation would be very bad.

I saw that condition by looking over this tariff yesterday morning, and I thought it would be illustrative and might be helpful in the consideration of that proposition. That is the reason why I have enlarged on it a little bit and because it is an application of the situation. It is a situation that could be found elsewhere in the South Atlantic States, where the Interstate Commerce Commission found the greatest departures from the rigid long and short haul rule, where conditions have already been readjusted in a very large measure, and it seems to me it would be almost impossible to readjust them on a strictly long and short haul principle.

That is all I had to say directly, Mr. Chairman.

Mr. STEPHENS. I would like to ask if the road were not permitted to make this low rate whether or not the loss of this business would not reduce the earning capacity of the road to such a marked degree that it would be unable to serve satisfactorily even the local stations.

Mr. GLOVER. That is the thought I had intended to convey when I said they would have to abandon this business, which is the principal business in that section. I meant to imply if they had to cut their road up into little pieces and give that service they would so reduce their revenues that, while they are in the hands of a receiver now, I do not know what would happen to them after that.

Mr. STEPHENS. This surplus tonnage they would have to carry does not, then, equal the capacity of the road, and is really a clear gain to the road.

Mr. GLOVER. Absolutely, in every respect; and not only that, but it gives the crossing towns available service. Frequently the direct lines are congested, and they can not get sufficient cars to move their cotton and their other products, and having this other road in the field they can give them service that is valuable; and it improves the service that can be given at the local points, because it permits them to add in the local point business and fill their trains with the competitive point business they are able to obtain, and thus enable them to operate on a more economical basis.

Mr. STEPHENS. Scrutinizing it in detail, it looks like a rank injustice to charge the intermediate points a higher rate than the terminal points.

Mr. GLOVER. Yes, sir.

Mr. STEPHENS. And yet if in the aggregate a greater service is being rendered to the greatest number of people by that sort of rate, it would seem wise to practice it.

Mr. GLOVER. I look upon transportation as containing two important factors—first the service and next the cost. A man who lives

in a local town on a railroad and can not get service because that road would be deprived of competing for the business at the competitive points where the large traffic was obtained would prefer to pay a higher rate than to have no service.

To-day we want all of the available routes open we can get. We have an enormous fertilizer business, and that business seeks every little crossing, wherever there is a sidetrack, and wherever there is some planter who wants a carload of fertilizer, and we have to have the rates and the service to all those places; and if we have to use a roundabout route to get to those destinations because the short line is not open, we will use it every time to get that tonnage. We want every line, long lines and short lines, available for it. We consider the service quite as important as the rates.

Mr. BARLOW. Mr. Chairman, I would like the committee now to hear Mr. Wheeler, of Boston.

**STATEMENT OF MR. H. W. WHEELER, OF BOSTON, MASS., TRAFFIC
MANAGER OF THE REVERE SUGAR REFINERY.**

Mr. WHEELER. Mr. Chairman and gentlemen of the committee, to establish a rigid fourth section of the act to regulate commerce would involve one of two things, namely, either the road or route between two common points having the longer haul, where higher intermediate rates are in effect, would be compelled to abandon that particular traffic owing to the necessity for advancing its through rates, or the short line would, due to its lower rate, become so burdened with the through business as to very readily produce a pronounced and acute state of congestion, which would result in its inability to accept a large proportion of the traffic offered for transportation between the two common points. This would undoubtedly have the effect of forcing shippers to use the longer route at the higher rate. This is in itself an imposition that shippers should not be called upon to bear.

The carriers affected by an inflexible application of the long-and-short-haul clause are so many, and the territory so widespread, practically the entire country being involved, that a number of instances could be cited where hardship would result. However, a few cases will serve to illustrate the point. The rate from Boston to Pittsburgh is made by the short line, but in order to use the New York Central and the Pittsburgh & Lake Erie, which is a recognized and thoroughly workable route, it is necessary for the traffic to move through Youngstown, Ohio—a higher-rate point. Again, the short line from the southeast to Boston is via Potomac Yard and Harlem River, thence over the New Haven road. The Harlem River route is in a practically perpetual state of congestion; in fact, it has been quite frequently referred to as the "neck of the bottle" in so far as New England business is concerned. Now, would it be fair to restrict the traffic to a gateway that is unable to handle it when it could move via other routes, such as, for instance, the New York Central and the Boston & Albany, or West Shore, and the Boston & Maine, or via Wilkes-Barre, Delaware & Hudson, in connection with either the Boston & Maine or the Boston & Albany? Another illustration is the line from Louisville to Norfolk. Either the Cumberland Gap Dispatch, via the Louisville & Nashville and the Norfolk

& Western or the Southern Railway's Ahseville line is considerably longer than the Chesapeake & Ohio, but both of these lines are recognized as through routes between the two points named. Again, the short line between Louisville and Cincinnati is the Louisville & Nashville, but considerable business is very properly moved via the Baltimore & Ohio South-Western. The Albert Lea route between Chicago and the Twin Cities is considerably longer than the direct line, but it should not, for that reason, be deprived of an opportunity to handle a share of that particular traffic. There are also the instances referred to by previous speakers.

Traffic is diversified, and a railroad may find it advantageous and profitable to handle both through and local business. Therefore, if the local traffic was of such volume and of such nature that any given carrier should find it necessary to either lower its intermediate rates, or abandon the through business, there would at once be produced a loss of tonnage, consequently a depleted revenue, with the enforced necessity for maintaining roadbed and other facilities, including terminals, for which it would have no means of deriving adequate revenue.

Reference has been made to free terminals furnished by carriers. It is a recognized fact that the road haul rate is made to include the expense of terminal delivery. This not only includes business handled to and from the carrier's terminals, but it also applies to business delivered to or taken from industry sidetrack. It must be borne in mind also, in this connection, that the establishment of a sidetrack by the industry serves to very materially relieve the railroad of additional expense in the way of terminal facilities.

Another horn of the dilemma is the possibility of a carrier which has been forced out of the long-haul traffic and thus deprived of needed revenue, being compelled to very materially increase its local rates. This could hardly be considered desirable.

There is another feature that it would be well to consider. Reference has been made to the handling of traffic between Chicago and Kansas City, the Santa Fe being the short line, and there are other similar situations. Now, to force the bulk of the freight traffic between Chicago and Kansas City to the Santa Fe would seriously and unnecessarily interfere with the legitimate passenger business over the rails of that line and because of its being the short line and having the lower rate would take the freight business from the other lines that are equipped for handling it and should be allowed to do so in order to derive the revenue which such traffic would afford.

The roads are already built and the facilities they afford should be used to the fullest possible extent, and to pass a bill that would serve to limit these facilities and restrict the flow of traffic is to imperil the commerce of the entire country. We need all the gateways, channels, and facilities that we can possibly have, and we look with disfavor upon any measure that would in any way restrict or limit traffic. Especially is this true with reference to New England, where we are, as it is restricted to only a few gateways by which we can bring in our raw materials and ship out our finished products.

Mr. Chairman, I have a letter in reference to this subject from the American Glue Co., which I would like to insert in the record, if there is no objection.

The CHAIRMAN. That may be inserted in the record.

(The letter referred to is as follows:)

AMERICAN GLUE CO.,
Boston, March 25, 1918.

Mr. H. W. WHEELER,
Traffic Manager Revere Sugar Refinery, Boston, Mass.

DEAR MR. WHEELER: The strict application of the principles announced in the fourth section of the act to regulate commerce and withdrawing from the commission the power to grant permissions to modify this provision is, to my mind, economically dangerous, if not impossible, and unwise as a matter of legislation.

The fourth section of the act as originally written is now a part of the law and has never been amended since its first enactment. The debates in Congress when this measure was being considered give the reasons for its enactment in its present form. Those reasons are as potent to-day as they were then, and it might be useful to those who are considering this proposition to look up these debates.

The proposition to equalize disadvantages of location by adjusting freight rates is economically wrong and to undertake it seriously will prove immensely expensive, if not disastrous.

The great domestic commerce of the country has adjusted itself to these conditions. It can not be said that the law or its administration has hampered or restrained development, and to disrupt the structure at this time is, to my mind, the height of un wisdom.

Under its wise provision the products of farm and orchard, mine, and factory reach their widest distribution. The produce of the Pacific slope reaches every market of the country at rates which are reasonable and bring them to our tables at a price which the poor man can pay.

Examples of this freedom of movement are so numerous that the limits of this letter do not permit even touching the subject.

Coming down to the interests intrusted to my care, the plan of restricting these movements, if put into effect, would be destructive.

Our raw material consists of animal by-products of a perishable nature which must be moved from tanneries and slaughter houses promptly to the glue factories. The production of this material is not regular nor constant. An excess at one point must be moved to equalize a scarcity at another. The material is of low value and can not stand a high freight rate. It is separated into its components of grease, glue, and fertilizer material, and unless handled promptly it is lost. This method takes care of material which might be wasted or lost and converts same into a useful article of commerce, paying several gradually increasing freight rates, and gives employment to many hundreds of employees.

The successful distribution of the finished product—glue and abrasives—the by-products of grease and fertilizer material depends upon the utmost freedom of movement at rates which are not unjustly discriminatory.

Competition regulated by law is the life of business, and I look with serious apprehension upon any drastic or revolutionary changes in the act to regulate commerce.

What is true of our business is true of nearly every enterprise in the country. There is no business which does not require the utmost freedom and assistance to continue in business and to grow and expand as opportunity permits or enterprise intelligence and industry may develop.

Very truly, yours,

AMERICAN GLUE CO.,
J. D. HASHAGEN,
Traffic Manager.

The CHAIRMAN. Mr. Barlow, is there anyone else you desire to be heard by the committee?

Mr. BARLOW. I would like the committee to hear now Mr. Rhodehouse.

STATEMENT OF MR. HARRY D. RHODEHOUSE, TRAFFIC MANAGER, CHAMBER OF COMMERCE, YOUNGSTOWN, OHIO.

Mr. RHODEHOUSE. Mr. Chairman, I have not much to add to what has been said, as far as the general situation is concerned. I think

the gentlemen who have already spoken have covered the situation pretty thoroughly.

As we are located in the Central Freight Association territory our conditions are similar to those existing in Toledo and Chicago and the gentlemen representing those cities who have already spoken have expressed my sentiments with respect to the proposed bill, H. R. 9928.

I wanted to mention the conditions that existed during the past year and those that exist at present, and the conditions that we think would exist if this bill was to become a law.

Youngstown is located in the Mahoning and Shenango Valleys or within a radius of 100 miles of Pittsburgh, which territory is known as the Pittsburgh district, and is perhaps the most congested district in the United States owing to the volume of traffic which originates within that radius.

In the Mahoning and Shenango Valleys there are 47 blast furnaces and 80 open-hearth furnaces. Twenty-two of these blast furnaces and 52 of the open-hearth furnaces are located in Youngstown and are very necessary toward the winning of the war. The Government is pressing us all the time for increased production of pig iron for the manufacture of war materials, but on account of the larger portion of the raw materials that are used in these blast furnaces originating east of Pittsburgh our supply has been limited to such an extent that we have not been operating more than 75 per cent capacity. This is due to congestion in and about Pittsburgh, and this curtailment of production exists even though the railroads have established additional routes other than the direct lines via which these raw materials move under ordinary conditions. We have routed some of this material via circuitous routes so as to avoid these congested terminals, but if a rigid fourth section was made effective, it would necessitate the routing of this business via the direct lines, and, of course, confine the movement to those direct lines which would without a doubt further limit the production of these furnaces as well as other war essentials to such an extent that it would, in my opinion, be disastrous.

During the past winter there were times when we did not operate over 40 per cent, but our operations have been about 75 per cent since the weather conditions have improved.

Last fall, at the suggestion of the general eastern operating committee, the traffic emergency committee, composed of industrial and railroad traffic men, was appointed to sit in Pittsburgh as often as they saw fit to work out new routes for raw materials into and semi-finished and finished materials out of the territory mentioned. This committee met nearly every week during the winter months, and is meeting at least twice a month at present. Their most important object is to establish rates and per cents via routes not now open, or establish per cents via routes that are not used at present, but via which rates are applicable.

We have opened up several new routes in the Johnstown, Pittsburgh, Youngstown, and Cleveland districts where there were violations of the fourth section, and by so doing have been enabled to operate our furnaces and mills to a higher percentage.

The shippers are all seeking additional avenues of transportation on account of congestions, and the Railroad Administration at

Washington, through their operating committees, are working out new routes all over the country, and we feel that for the period of the war at least that this work should not be interrupted by a rigid application of the fourth-section law. Even under normal conditions, if we were confined to the short lines, owing to the density of traffic in our district, it would be difficult at times to receive raw materials and ship our finished products.

As an example, the short line to Cleveland is the Erie Railroad. If we can not use the other lines, I am satisfied that the volume of business moving from our territory would be so great that the Erie could not handle it. There are several like situations, such as Akron, Canton, and other cities in that territory, where the short line would be unable to handle the traffic; but, as we are now allowed to use four routes to that territory from Youngstown, we are able in most cases to ship our products without delay. The storage capacity of the mills in this territory is so limited that if we did not make shipments promptly a great number of the plants would be forced to close.

Mr. HAMILTON. You say that under present conditions, using all the routes available, you are operating only up to 70 per cent capacity?

Mr. RHODEHOUSE. It is possibly a little more than that now, but during the winter it was far below that figure. During the winter months we were operating on an average less than 60 per cent; the increase being due to the better weather conditions.

Mr. HAMILTON. Does that mean that lack of transportation has reduced your output by 30 per cent?

Mr. RHODEHOUSE. Not all of 30 per cent, but nearly all of that

Mr. HAMILTON. Then your production is absolutely curtailed?

Mr. RHODEHOUSE. Yes, sir; we do not have the necessary transportation.

Mr. DEWALT. By the use of these routes and the establishment of these rates, of course, you are obliged to pay higher rates than you would if you used the long haul, are you?

Mr. RHODEHOUSE. I beg your pardon; I did not understand your question.

Mr. DEWALT. I say by the using of these routes you have fixed for this traffic, which have been fixed by this traffic committee, you are obliged to pay higher rates than by using a long haul.

Mr. RHODEHOUSE. No, sir; if there are any violations of the fourth section on those routes application has been made to the commission, and special permission given by them to publish the rate on short notice, owing to the conditions. If there are no violations the rates are put in on short notice, with the permission of the commission.

Mr. DEWALT. By that privilege being given you and the operation of these short routes, is there any discrimination made in your favor as against anybody else engaged in the same industry in the same locality?

Mr. RHODEHOUSE. Not to my knowledge.

Mr. DEWALT. Then the result is the general good?

Mr. RHODEHOUSE. Yes, sir; it does not in any way effect the points that carry higher rates.

Mr. SNOOK. Did I understand you to say it is your opinion if this law was passed it would prohibit your industries at Youngstown using the longer route?

Mr. RHODEHOUSE. Yes, sir; to some points.

Mr. SNOOK. It would either do that or increase the rates.

Mr. RHODEHOUSE. Either one; yes, sir.

Mr. SWEET. The facts you have related here pertain to the last few years, do they not?

Mr. RHODEHOUSE. They do particularly; yes, sir.

Mr. SWEET. Prior to that time you did not have a congested condition, to any great extent?

Mr. RHODEHOUSE. At times we did. We are situated in that particular territory where we have congestion right along, but there are times, of course, when we do not have it.

Mr. DOREMUS. What is the principal market now for the products of Youngstown and that vicinity?

Mr. RHODEHOUSE. In Youngstown there are a number of plants making semifinished materials, such as blooms, billets, slabs, etc., which are sent to mills in near-by cities to be finished into war materials of one kind or another.

Mr. DOREMUS. What is the ultimate destination of those products, do you know?

Mr. RHODEHOUSE. The larger percentage of them are consigned to the United States or allied Governments and exported. Some of these materials are consigned to firms manufacturing war supplies to be shipped to Europe.

Mr. DOREMUS. What particular water competition affects the rates from Youngstown east?

Mr. RHODEHOUSE. East?

Mr. DOREMUS. Yes.

Mr. RHODEHOUSE. There is no water competition affecting those rates. You mean to the Atlantic seaboard?

Mr. DOREMUS. Yes.

Mr. RHODEHOUSE. There is none.

The CHAIRMAN. The Ohio River is navigable from there west and south.

Mr. RHODEHOUSE. Not from Youngstown. We are not on the Ohio River. We are on the Mahoning River, which is not navigable.

The CHAIRMAN. We are very much obliged to you.

FURTHER STATEMENT OF MR. C. H. BARLOW.

Mr. BARLOW. Mr. Chairman, I would like to give some data showing the extent to which application has been made, granted, and denied under the law as it is now on the statute books. It will be interesting to see how the whole country would be affected with a rigid fourth section act. I will be glad to put these figures in the record.

I have, through the courtesy of the department of fourth sections, so called, of the Interstate Commerce Commission, the following data:

The total number of applications made by the railroads under the fourth section of the law, the long-and-short-haul provisions of the law, since February 17, 1911, when the present law became operative, is 11,295. The number of applications filed prior to February 17, 1911 (the law providing that six months' time should intervene before the permissive part of the law became effective), was 5,031.

Therefore there has been filed under the law since February 17, 1911, 6,264 applications.

The total number of orders issued which have disposed of applications in full—that is, issued by the Interstate Commerce Commission—is 8,302. The number of orders granting the authority sought, in whole or in part, is 5,436. The number of orders denying applications in toto is 2,866. The number of applications still pending is 2,993. I will say in regard to the last-named applications that the number includes simply the numbers of the applications in the files of the commission. For instance, the applications of the Southern Railroad would only carry one number in the files, but that might include, and does substantially include, 500 or more reliefs sought on that system.

Of the 2,993 applications last mentioned—that is, those undisposed of—hearings have been held on approximately 500, which are now before the commission for consideration in one report. Of the total of 11,295 applications filed, only 28 related to transcontinental traffic. Of these 28, 19 were filed prior to 1911 and 9 subsequently thereto, and all of these have been disposed of by the Interstate Commerce Commission.

The CHAIRMAN. Do you know how many of the last number of applications were made upon actual or potential water competition—either or both?

Mr. BARLOW. Of the 28 I do not. Of the total number they are mostly such cases as those illustrated by Mr. Glover.

If the committee will be pleased to listen to me in regard to that, I will say this: The operation of the commission, as I understand it, is this: Where two lines from some given point to some given point of destination are of different lengths, the longer line being not to exceed 115 per cent of the shorter line, the longer line is permitted to meet the shorter line rates, but must apply that short-line rate at intermediate points, no railroad being given relief where the distance is not in excess of 115 per cent of the short line. Where the distance exceeds 115 per cent of the short line, it creates prima facie evidence that it needs investigation. If it should prove to be 50 per cent greater than the short line, the policy of the commission, as I understand it to be, is this, that the long line must make no higher rates for equal distance than is made to the terminal points by the shorter line.

Relief is only granted in this way: If the short line is 400 miles in length, the long line can charge no greater rate for 400 miles, and relief is only granted for the difference in distance between 400 miles and the distance to final point of destination.

The CHAIRMAN. You mean an intermediate point that is more than 400 miles—

Mr. BARLOW (interposing). There relief would be granted.

The CHAIRMAN. They might charge for all over 400 miles, such charge as the commission decides is reasonable?

Mr. BARLOW. Yes. There is one instance in the South that I would like to call your attention to: The short line was practically 100 miles long, and the long line was practically 200 miles long. The commission denied relief, but upon the reopening of the case they granted relief to the longer line.

The general policy of the fourth section board, as I understand it, is that where the longer line is 100 per cent more distant than the shorter line, they consider that a waste of transportation, and they hesitate to grant relief. In some cases relief was denied, but in this particular case it was shown that both the shippers and the receivers were located at the point of origin and at the point of destination on the long line. They had three mills there, and they could not use the shorter line, and after special investigation and a survey of the whole terminal situation, the commission did in that case grant relief.

I mention that to show that each situation arising has its own peculiar conditions, and the necessity of leaving the decision of these matters where you have placed it, in the hands of the Interstate Commerce Commission, so that an intelligent survey may be made and each case decided on its merits, which is, as we understand it, what the present law contemplates.

The CHAIRMAN. Yesterday you said something that I intended to question you about, but which I did not. You said, as I recall, that there was a charge for terminal facilities, not as such, but included in the rates. Do you mean that is included in the transportation?

Mr. BARLOW. Yes.

The CHAIRMAN. I wish you would explain that so that the mind of a layman can get hold of it.

Mr. BARLOW. Let me illustrate it by the so-called trunk line adjustments, which includes the rate from the Atlantic seaboard to the territory north of the Ohio and Potomac Rivers and east of the Mississippi. That embraces more than half of the traffic of the country.

The CHAIRMAN. That is official classification territory?

Mr. BARLOW. Yes; that is official classification territory. The trunk-line adjustment of rates was established in 1876, or about that time. It provided that New York and Chicago should be the basis of adjustment of rates in that entire territory. That is to say, New York and Chicago were the 100 per cent points. All other rates in the territory are related to the Chicago rate. That is to say, Pittsburgh takes 60 per cent of the Chicago rate; Youngstown takes 67 per cent of the Chicago rate.

The CHAIRMAN. You mean, from New York to Chicago?

Mr. BARLOW. Of the New York to Chicago rate. For instance, if the rate is \$1 from New York to Chicago, the rate to Buffalo would be 60 cents and to Youngstown it would be 67 cents.

The CHAIRMAN. That is, through from Youngstown to Chicago?

Mr. BARLOW. No; from New York to Youngstown. The rate to Detroit and Toledo would be 78 per cent of the Chicago rate, the rate to Indianapolis would be 93 per cent of the Chicago rate, and the rate to St. Louis would be 117 per cent of the Chicago rate.

The CHAIRMAN. Leaving New York and going to all of these other places?

Mr. BARLOW. Yes. Those are worked out substantially the short or workable line distance. In arriving at those percentages they took a hypothetical rate of 25 cents from New York to Chicago as the basis. They deducted 6 cents from that 25 cents, being 3 cents on each end for terminal charges. They then reduced—

The CHAIRMAN (interposing). You mean, that 25 cents embraced 3 cents terminal charges at each end?

Mr. BARLOW. Yes.

The CHAIRMAN. That would make the freight charge 19 cents.

Mr. BARLOW. That would make the freight charge 19 cents; yes, sir. Then they found what the rate would be to Indianapolis, and they set aside 6 cents for terminal charges, and apportioned 19 cents on the basis of the distance and then added back the 6 cents for terminal charges, and that made the Indianapolis rate 93 per cent of the Chicago rate. So in all that territory the rates established originally since we have had the so-called trunk-line scale, provided a terminal charge of 3 cents at each end, and it is always added to the rate for transportation, which is obtained in the manner in which I have illustrated it in the case of Indianapolis.

In the recent decisions of the Interstate Commerce Commission, in reference to the so-called Central Freight Association territory, which embraces western New York, Pennsylvania, Michigan, Ohio, and Indiana, and business between those States and Illinois, the commission devoted a good share of two days to testimony on behalf of the carriers as to the cost of the terminal charge at both ends.

The first-class rate in that territory for 30 miles was $7\frac{1}{2}$ cents, and the commission advanced it, I believe to 25 cents, based largely, I think, upon the showing made by the carriers as to the cost of the terminals.

The CHAIRMAN. You say it was increased from $7\frac{1}{2}$ cents to 25 cents per hundred pounds?

Mr. BARLOW. Per hundred pounds first class.

The CHAIRMAN. Then the terminal charge is more than double the line haul.

Mr. BARLOW. Yes; in that instance. Of course, $7\frac{1}{2}$ cents was an extremely low rate, and it came about by reason of a law passed by the Legislature of the State of Ohio in 1854, in which they fixed the maximum rate in the State at 5 cents per ton per mile, and 5 cents per ton per mile is $7\frac{1}{2}$ cents per hundred pounds for 30 miles.

The CHAIRMAN. That was the statutory rate in Ohio?

Mr. BARLOW. That was the statutory rate in Ohio, which was repealed three years ago. That was based on that old law, which provided that low rate.

The CHAIRMAN. That is, the low freight rate.

Mr. BARLOW. Yes; of $7\frac{1}{2}$ cents.

The CHAIRMAN. Upon what did they base the excessively high terminal rate?

Mr. BARLOW. In the new tariff?

The CHAIRMAN. You said it was 25 cents, and only $7\frac{1}{2}$ cents was the charge for the line haul, by reason of an old Ohio statute, and the balance between $7\frac{1}{2}$ cents and 25 cents was the terminal charge.

Mr. BARLOW. I beg your pardon.

The CHAIRMAN. That is the way I understood it.

Mr. BARLOW. I did not intend to convey it in that way. The commission has determined that $7\frac{1}{2}$ cents for 30 miles was a subnormal rate and an unprofitable rate.

The CHAIRMAN. Thirty cents?

Mr. BARLOW. No; $7\frac{1}{2}$ cents for 30 miles. They determined that was an unprofitable rate.

The CHAIRMAN. Did they determine it was not equal to the cost of operation? Was it less than the cost?

Mr. BARLOW. I do not think they said so, but they accepted the testimony of the railroads; and I might say, on the part of the shippers, it was perfectly evident that that was not a profitable rate.

The CHAIRMAN. Was it also perfectly evident that it was below the cost of operation?

Mr. BARLOW. I say we thought that the rates were unreasonably low, and that the shippers could well afford to pay a higher rate than that.

The CHAIRMAN. Then, was not the act of the Ohio Legislature void if it required them to perform the service at a loss?

Mr. BARLOW. I rather think that argument had its effect on the Legislature of Ohio. The shippers of Ohio went before the legislature and asked them to repeal the law. They believed that rate was too low.

In the determination of the question finally, due consideration was given to the cost of the terminals at each end, and the road haul; and the rates in that territory to-day are substantially $37\frac{1}{2}$ per cent higher than they were before the Interstate Commerce Commission fixed the rates, and they took effect on October 1 last year.

I do not mean by that the roads will earn $37\frac{1}{2}$ per cent more, because I have no idea what proportion of business was carried under each rate; but, figuring the rates themselves as rates merely, they are substantially $37\frac{1}{2}$ per cent higher than the old scale—forced, to some extent at least, by the old statute of the State of Ohio.

The CHAIRMAN. Now, did the Interstate Commerce Commission authorize the 25-cent rate and the excessive terminal charge in order that the haul charge and the terminal charge together should be a reasonable rate?

Mr. BARLOW. Yes; I would so understand.

The CHAIRMAN. Without any reference to how much the terminal service was actually worth?

Mr. BARLOW. Very exhaustive figures were given showing the cost of the terminals, which were pretty generally accepted by the protestants as well as the carriers.

The CHAIRMAN. What was the relative difference in the cost for terminals and for transportation service within the 30 miles?

Mr. BARLOW. That is difficult to determine in discussing one road, which carries first, second, third, and fourth class merchandise in less-than-carload quantities.

We assume that, substantially speaking, the cost of terminals on each one of those classes is almost alike. But the first-class rate is much higher than the fourth-class rate, of course, because the first-class rate includes dry goods, boots, and shoes, and the fourth-class rate includes soap and iron. The expense of terminal handling is substantially the same on all four classes.

If we make a rate of 25 cents on first class, 20 cents on second class, 15 cents on third class, and 10 cents on fourth class, we must say that the aggregate of those four rates, based upon the tonnage handled under each one of the four classes, will aggregate the terminal charge at each end, and also the line haul. If you haul 30 per

cent of your business at fourth class, and 20 per cent of your business third class, and 10 per cent of your business second class, and the remainder first class, then you must fix a first-class rate, so that when the percentage relation of the second, third, and fourth classes to the first class is established the four of them combined will produce a charge that will, in the aggregate, cover the terminal expense, the line haul, and a fair profit.

Mr. DEWALT. One of the gentlemen who appeared before the committee, in his statement the other day gave this example of discrimination—and if my figures are incorrect I hope you will correct me—he said that the freight charge from Pittsburgh to San Francisco on structural steel showed a discrimination as against Reno, Nev., of 78 per cent at one time, and that that discrimination had been reduced to 15 per cent.

Mr. SHAUGHNESSEY. It had been reduced by the order of the Interstate Commerce Commission; yes.

Mr. DEWALT. And that afterwards that was modified to make a discrimination of 48 per cent as against Reno, and that that was the present rate now existing.

Mr. SHAUGHNESSEY. Subject to certain modification, that illustrates it up until the 15th of March, when the discrimination was removed.

Mr. BARLOW. There is no so-called discrimination now.

Mr. DEWALT. In presenting that thought to my mind, this occurred to me, and I want to know whether it is correct: That discrimination of 48 per cent, if it still existed, would it permit people to ship iron to San Francisco, and they getting control of that freight afterwards ship it back to Reno and sell it there at such prices as they saw fit, because of the fact that the transportation rate from San Francisco back to Reno would permit them to do that? Do you know whether or not that was done?

Mr. BARLOW. They did do that up to the time you changed the law, and the Interstate Commerce Commission took hold of the matter. The rates to Reno were the full combination of locals on Sacramento. In some instances in past years the rate to Salt Lake City has been the combination of locals on San Francisco. The speaker condemns that unqualifiedly as being unjust and unreasonable.

(Thereupon, the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m., pursuant to recess. The CHAIRMAN. You may proceed, Mr. Barlow.

STATEMENT OF H. C. BARLOW—Resumed.

Mr. BARLOW. Mr. Chairman, if the members of the committee please, I would like to refer to the last question asked, I think by Mr. Hamilton, in regard to making rates to interior points the combination of the locals, a practice which I condemn.

The CHAIRMAN. That was a question by Mr. Dewalt.

Mr. BARLOW. My judgment on those questions is this: That where a railroad asks to voluntarily depart from an established adjustment

of rates at San Francisco, for example, as I illustrated, it takes upon itself duties which it owes to the intermediate country. It can not, in my judgment, disrupt a normal situation without doing substantial justice to those that may be or are affected by it. I do not mean by that that the rates to Reno should always be the same to San Francisco. There may be reasons why they should not be, under certain conditions. But Reno should be treated fairly when the rate to San Francisco is changed, and to make the rates to Reno a combination of locals on San Francisco is unjust and unreasonable, in my opinion.

Now I have always felt that it was the conditions growing out of past situations which made the rate to Reno the full combination of locals on San Francisco, that lead this Congress, in their judgment, to change the law and put the power to control that situation in the hands of the Interstate Commerce Commission; because you say the extent to which they may depart from the prohibition of the fourth section, the long and short haul provision. It rests there. I can not voice the opinion of the Interstate Commerce Commission, but I have been before them for twelve years. I have been in this work all my life, and I am trying to speak viewing the whole interests of the country, and not representing Chicago in this matter. I do not believe that the past conditions under which this intermountain country had, in my opinion, just reason to complain, will ever exist again under the law as it stands to-day; that when the rates are from necessity reduced to the Pacific coast, due and proper consideration will be given to that changed condition and its operation upon the interests of the interior, the intermountain country, and all the rest of the country. That is the purpose of the law as I understand it to-day.

The CHAIRMAN. Well, Mr. Barlow, I want to ask you a few questions about terminal charges that, I will admit, are not very pertinent to this bill, but they are pertinent to the whole railroad situation; and you seem to be so well informed on these matters, which is the reason I am asking you, not with any particular reference to the present bill, and I feel like apologizing for going outside of the bill, but we have to get information where we can, and as you are here and available, I want to ask you some further questions on the general effects of the bill. Now, in speaking of terminal charges being included in the rates so far, are the rates being adjusted to-day so as to absorb the terminal charges—has that applied alone to freight traffic or does it also apply to passenger traffic?

Mr. BARLOW. My judgment is that it has been in the major portion applied to freight traffic and not to passenger traffic.

The CHAIRMAN. The terminals are usually separate.

Mr. BARLOW. Usually the terminals are separate. The standard passenger rate was fixed at 3 cents a mile, generally, in this so-called eastern territory. Some of the States have found it desirable to make it less. Now, what operated on their minds to fix those rates I, not having had much experience in passenger service, being a freight man, am not prepared to answer. I should think, however, that in the main the discussion of the terminal situation has been devoted more to freight than to passenger traffic.

The CHAIRMAN. Is it not also substantially true that about three-fourths of the entire revenue of railroad companies is derived from freight traffic?

Mr. BARLOW. Yes, sir; or two-thirds is a fair estimate.

The CHAIRMAN. Now, is it a fact that in arranging or adjusting or arriving at the amount of terminal charges of 3 cents a hundred it was applied generally to all kinds of traffic and classes of traffic and to all kinds and classes of terminals? In other words, did it apply to all the freight uniformly, 3 cents a hundred, regardless of the investment in station, or wherever it was, or the amount of expense involved to the railroad company in the construction and maintenance of terminals?

Mr. BARLOW. That is true in the official classification territory.

The CHAIRMAN. I mean official classification territory.

Mr. BARLOW. I apprehend that that was a fair estimate of about what the terminals would be. You will appreciate the fact that in many instances the terminal at the smaller stations is more expensive than at the larger stations.

The CHAIRMAN. That is, the buildings are not, but the maintenance of it?

Mr. BARLOW. No; the expense of receiving and delivering the freight.

The CHAIRMAN. Per hundred pounds?

Mr. BARLOW. Per hundred pounds. That depends upon the volume of traffic. You can readily appreciate that to load a box into a train, to unload it at some little small station, stop that train, and go to all the expense of stopping it, the crew going back and finding that box and unloading it, then relocking the car and starting the train again, is a much more expensive terminal per hundred pounds than it cost originally to handle that box in Chicago, where there were hundreds of carloads.

The CHAIRMAN. That is undoubtedly correct. I do not know myself, but it is so evident that it does not require any evidence in support of it.

Now, I want to ask you this further question: Has the terminal charge that has been made, 3 cents a hundred, has that been sufficient to give a reasonable and fair return upon the value of the property comprising the terminals and the services, the special terminal services, that had to be rendered regarding the freight handling?

Mr. BARLOW. Well, my judgment would be this, Mr. Chairman, on that point: Inasmuch as that terminal of 3 cents at each end was fixed in, say, 1876, it is either too small or too large now, under the changed conditions. I am inclined to think that it is too great on the straight carloads of freight which the shipper loads and unloads on his own private sidings; and you may say that the carload freight of this country is approximately 90 per cent of the gross traffic hauled by the railroads. The less-than-carload merchandise traffic is substantially 8 per cent of the tonnage, and constitutes from 16 to 19½ per cent of the gross tonnage of the railroads. Now, since the deduction of 3 cents on all freight was put into effect—or the calculation of that—the terminals provided by the shippers have very greatly increased. I am inclined to think that the value of the

terminals which are now provided by the shipper may be greater than the value of the terminals provided by the railroads.

The CHAIRMAN. And to that extent the railroads are relieved of having to provide the terminals; or if they did provide them, would it substantially increase the terminal capital charge and service of the railroad company?

Mr. BARLOW. Yes; enormously. They would have to provide team track or some other manner of receiving and delivering freight, and that in the great cities now, as well as in the smaller towns, would be an enormous burden. Now, inasmuch as the development of the private terminals owned by the shipper has increased so in recent years, I am inclined to think that the 3 cents deduction for terminals on carloads is a little bit excessive. I am inclined to think that the 3-cent deduction on less than carload traffic is too small.

The CHAIRMAN. Well, now I want to find out if I can—and I think you know—as to whether or not the terminal revenue—I will put it this way—that is, that is absorbed in the line haul, in the charge—if that terminal revenue is equivalent as a fair return for services and capital investment, is as fair a return as the rate charged on the freight—for the actual movement of the traffic? Is the return on capital that the railroads have put into railroad terminals, together with the necessary services performed, on a parity with the return on capital that is invested in the railroad and equipment, or about what relation does it bear? In other words, which does the railroad make the most money on, on the capital and services rendered in the movement of the freight or on the capital and services rendered in what you would call terminal services?

Mr. BARLOW. Well, my judgment would be that they make the most money out of the movement of the freight.

The CHAIRMAN. In other words, that the charge that it receives for moving the freight, the fare received, is a better return on the capital invested and the services rendered on the movement for line haul, than it is in the way of return on the amount of capital invested and the expenses incurred in maintaining terminals?

Mr. BARLOW. This is my idea, that there is more profit in the amount apportioned to the line haul than there is in the amount apportioned to the terminal charge.

The CHAIRMAN. That is a very good expression, and better than I could have formed it.

Mr. BARLOW. For this reason: The terminal charge is a stationary thing at both ends. It may vary a little with increasing cost of handling, but the haul charge increases in relative profit as your distance increases. That is to say, by way of illustration, take a train of 2,000 tons from Buffalo to Chicago over the Lake Shore road; deduct your terminals, and it would be almost impossible to determine how much the last hundred miles of that haul cost per hundred pounds. You could not find it.

The CHAIRMAN. It would be so little?

Mr. BARLOW. Yes; you could not find it. Therefore, as your haul increases, and your rate relatively increases—not at the same rate per mile but at a fair relative increase—your profits, of course, multiply very rapidly, and your terminals are substantially a fixed quantity on both sides. Therefore I say the major profit of the railroads is in

that portion allotted for line haul and not in the amount allotted for terminals.

The CHAIRMAN. Well, is it not also a fact that in the last 10 or 15 years the increased requirements in the way of capital investment for terminals has been much greater, relatively, than the increased demand of capital for the facilities for line hauls?

Mr. BARLOW. I don't know, but it ought to have been. And, Mr. Chairman, what we are suffering under now is the want of engines and terminals; we have got plenty of cars if we had room to handle them—

The CHAIRMAN. The congestion, then, is not a question of moving the freight over the rails so much as it is at the terminals and the number of cars necessary for the movement of the freight?

Mr. BARLOW. Well, I would answer that in this way, if you please. I think there is a sufficient number of cars. There is a lack of locomotives and a very severe lack of terminals.

The CHAIRMAN. I intended to say locomotives instead of cars, because if the trains—if the cars can not be unloaded—if they can not be carried because of insufficient locomotives, and then in the next place can not be expeditiously unloaded when they arrive, that produces congestion.

Mr. BARLOW. Yes. It is nothing unusual to take a week to deliver a car after it reaches Chicago. Now, that is a cruel waste of equipment. It is a cruel penalty on the shipper. And right on that thought, if I may digress a little, I think we should always bear in mind what it costs commerce to have poor transportation service. We lose sight of that. Say the value of the commerce carried by the railways in this country is \$220,000,000,000 a year—that was estimated for one year, I think 1908 or 1910—and there is an unusual delay of a day or two days. See what 6 per cent interest on that means. And somebody must pay it. You can't avoid that, and that gives you some idea how good or bad service affects commerce. Therefore we need terminals and engines for rapid movement. The shipper will unload the car, and he will load it promptly if the railroads can get it to him.

The CHAIRMAN. Well, now I am coming at last to what seems to me to be a very pertinent question, and that is whether we shall not at least commence to make a specific separate terminal charge for terminal services; and that the terminals, or the capital invested in terminals and the services rendered, should render a reasonable and fair return to the railroad company, which is not done now, but may be made up by an increase of terminal charges, looking to an ultimate reduction in the transportation charges as much as possible.

Mr. BARLOW. My judgment is in the negative of that, Mr. Chairman. That is foreign to the way of making American freight rates. Under a system of that kind you might make the terminals of the railroads so profitable as a going institution that they would absolutely discourage the shipper furnishing his own terminals, and that would add infinitely to the capital invested in railway terminals, as is the situation in England to-day. Now, Mr. Chairman, I believe we should continue to make rates, including in the rates a fair allowance for terminals, but they should be published as one rate. I believe we are moving rapidly toward the solution of the terminal

problem in that direction, as all the recent decisions of the Interstate Commerce Commission point. We wish to conduct our business with one gross statement of what it is going to cost us to do it, from me to you, and you to me. We do not want any division of it. And I repeat, you might encourage by trying to fix a terminal charge that would make terminals profitable, an enormous increase in the capitalization of the railroads for terminals which you would be constantly compelled to pay on, and possibly ultimately absolutely eliminate the shipper's private terminals, the development of which I say is in large measure the solution of the terminal question.

The CHAIRMAN. Well, the shipper's private terminals, as I understand it, are simply a convenience to himself, and the cars are carried there to his private terminals and he loads and unloads the cars with an economic benefit to himself that he does not have to haul his freight from his manufactory to the railroad company wherever it might be, wherever the railroad terminals might be; and I can not see why we would not still have private terminals, just as we have now, provided it did not involve an additional expenditure on the part of the railroad company.

Mr. BARLOW. The private terminal is a convenience to the shipper and one of great economy to the railroads. There is a mutual relation there.

The CHAIRMAN. I know the railroad is released from providing terminal facilities; in other words, it can get along with less terminal facilities by these private companies arranging for themselves their own terminals, but the private manufacturer or shipper would do that anyway.

Mr. BARLOW. Let us see, Mr. Chairman, whether he would.

The CHAIRMAN. Why wouldn't he?

Mr. BARLOW. Let us see what the result might be.

The knowledge that the shipper can have and build his own private terminal takes him out of the congested districts of a great city. If he did not do that, the railroads might be compelled, and would be, to furnish terminals in the congested district of the city. I have in mind one team track in Chicago owned by a railroad which holds 33 cars, and the property on which it is located is worth about \$4,000 a front foot. Now, that team track is in great demand, because it is located near Madison and Canal Streets, right in the center of the city. People would want to use the most expensive terminals. Now, why not say to them, "No; we can not go on increasing terminals of that kind. Go outside; get away from this congested district; put in your own terminals and use them." And that saves the enormous capitalization of the railroads and lets the shipper bear his part of it. And I apprehend and fear that any attempt to subdivide the rates of the railroads into line haul and terminal, fixing the terminal at such an amount as would bring a fair return upon the investment would, as I again repeat it, lead to enormous expenditures by the railroads for terminals, because they would be profitable and curtail the movement for private terminals.

The CHAIRMAN. You think that the railroads—that the capital invested in terminals of the railroads, if the terminals were remunerative, that the terminal charge that was provided for would be more profitable than the capital invested in the rest of the railroad property?

Mr. BARLOW. Perhaps not; but wherever you fix a compensation that will make an investment profitable, you encourage that investment. You can not avoid it.

The CHAIRMAN. But at the very moment you begin to do that, you reduce the profit on the terminal charge that is not now included as part of the movement of the car. You are taking off of one and putting it onto the other.

Mr. BARLOW. But I would approach that with a great deal of apprehension. I think we had better stand by what has been the long-established American principle.

The CHAIRMAN. Which is in effect what?

Mr. BARLOW. That the terminals are comprehended and included in the gross rate.

The CHAIRMAN. And the effect of which is forever and continuously to increase the freight rate, the movement charge.

Mr. BARLOW. No; I think not, Mr. Chairman. I think the way we are approaching the subject now, that due consideration will be given to the line-haul profit in connection with whatever is considered a fair apportionment for terminal. And again, Mr. Chairman, if you are to fix the terminal charge based upon a return upon the property investment, you would have a different terminal charge at every city; and while it might not be undue and unjust discrimination, yet it would be discrimination and would tend to restrict the movement of traffic to and from certain points. It might have that effect, and my idea is that the greatest distribution of traffic possible under all and competitive conditions is the best method of building up the country at large.

The CHAIRMAN. The result of present conditions is, as I see it, practically that terminal service is a free service to the man who receives it.

Mr. BARLOW. No; if you will refer to the decision of the United States Supreme Court in the Los Angeles switching-charge case, the court held there that it must be a fair assumption that these terminal expenses are included in the rate. There an effort was made to put on an extra charge at Los Angeles, appealing from a decision of the Interstate Commerce Commission which was against it, and the courts sustained it.

The CHAIRMAN. Because the custom had been just as you have been stating it—that the terminal service was part of the line haul or charge or fare.

Mr. BARLOW. Included and taken into consideration.

The CHAIRMAN. And increased the charge to that extent. Now, then, you are afraid that a fair return on terminals would be so profitable that the railroads would no longer permit shippers to have their own private terminals?

Mr. BARLOW. Not that they would refuse, but they would discourage it.

The CHAIRMAN. They would not discourage it unless the charge made for terminal was more than an average fair return on the rest of their property.

Mr. BARLOW. I can only repeat that where you make any particular service profitable you encourage the investment in that service. That is human nature.

The CHAIRMAN. Then that implies, of course, that the only way to prevent that is that you shall have an unprofitable service—I mean that a branch of this service shall be unprofitable.

Mr. BARLOW. Not necessarily. Your terminal service should be fairly adjusted, but included with and in the rate itself, and all the conditions and circumstances must be taken into consideration. It was disclosed, if you please, in the Texas-Louisiana case that to charge for the short distances, even the full amount which the companies claimed was their actual terminal expense, the business would all go by automobiles.

The CHAIRMAN. Well, but your arrangement of terminal charges could vary just like the rate does. Now, I do not remember a single case, a large case, in which there has been an application for an increase of freight rates that the complaint has not been made by the railway executives that by virtue of local requirements and pride and pressure of cities that they were continually having to add to their capital in the way of increased terminal facilities and the expense connected with these nonremunerative investments—that is what they call them, nonremunerative. Now, if the terminals do not pay, are nonremunerative, if it is a losing investment, the more that investment is increased with no return for it the more you have got to earn on the remunerative portion of the service, and I see no end of increased freight rates and transportation charges. I see no injustice to the passenger that gets off in the city of New York in a splendid passenger terminal, where he does not have to travel in a hack or in a boat—I see no reason why he should not pay a terminal charge for the benefit of that splendid passenger terminal in New York City.

Mr. BARLOW. I can not discuss with you the passenger situation, but let us see if the argument of the railroads in regard to freight terminals is not in large measure a fallacy; the investment in freight terminals and the investment of this so-called unprofitable amount is made necessary only because of an increase in business. And if there is an increase in business that requires an increase in terminals, then the investment in terminals is not unprofitable. It must be profitable.

The CHAIRMAN. But, Mr. Barlow, the increased cost of the added land in congested cities is out of all proportion to the increased demand for those facilities. Now, an ex-Member of the House, and a gentleman of high character, whose word will be taken anywhere where he is known, told me that, in conversation with James J. Hill, when Mr. Hill was thinking about building a railroad from Chicago into the city of New York—that Mr. Hill said, after making a thorough investigation of it, that it would cost as much to him after reaching the city limits of New York to build into New York, and the terminals, as the whole 1,000 miles would cost from Chicago to New York.

Mr. BARLOW. That may be true, and the rates that he might be permitted to charge would be altogether out of proportion to just simply the line haul from the city limits of Chicago to the city limits of New York.

The CHAIRMAN. Now, do you mean to be understood that if such a road was built from Chicago to New York, costing as much to get into the city, which is a purely terminal matter, as it did to build the

entire 1,000 miles, that then that entire terminal service should not be determined or measured—I mean the value of it—by the investment, but that it should remain at your stationary idea of 3 cents a hundred, regardless of the cost of the land that it takes to get in there, the cost of the millions that has to go in to buy the right of way and ground on which to put up a terminal?

Mr. BARLOW. Well, as I stated, Mr. Chairman, you will recall that I thought that inasmuch as the 3-cent terminal at each end was fixed in 1876, or thereabouts, it is probably either too low or too high now. My judgment is that it was too high on carloads and too small on less than carloads. But I still maintain that it would be unwise, bad economy, to undertake to subdivide the line haul from the terminal and make a separate charge for each. I, however, frankly concede the justice of a fair computation of the value of the terminal service, and it to be included in the line-haul rate. To build a road from Chicago to New York now and buy the terminals that would take care of any volume of business in the two cities would probably make necessary such rates, if a return was to be paid upon the entire value of the property, that the public could not use the road at all.

The CHAIRMAN. It is true that rates are not altogether made with reference to the value of the property, but the capital put into railroads must return something or it will not be put in. The road would not be built, and that brings about your congestion. Now, it seems to me that we are going to have to come to that, and the sooner you practical men begin to think about it, the better, because it is now a question, as I understand it, whether it will take more money to continue to build terminals to the extent that business requires them than it will to build any and all additions to the railroads; and that the capital invested in terminals to-day is practically equal to all the rest of the capital invested in the railroads.

A gentleman from Chicago, who was president of a very great railroad company, once told me that if he were given the choice between the terminals of the Illinois Central Railroad Co. and the rest of the property, he would take the terminals and make money by doing it.

Mr. BARLOW. I would not do that. I think the Northwestern would come nearer to it.

The CHAIRMAN. Now, is the increase of capital for terminals—and they are needed, and we have got to have them; there is no question but what you are right about that, and without it we are going to have congestion and no movement, or very much of a restricted movement—it seems to me that the traffic—that is, the movement of traffic can not stand the increased freight rates that naturally are required to take care of all these unremunerative investments, and I do not know of anyone that I could talk to that knows any more about it than you do.

Mr. BARLOW. Mr. Chairman, you would find, if you were familiar with Chicago, that the majority of the nonremunerative investments in real estates, etc., which the companies have bought, they have bought to protect themselves against the future growth of the city, and they bought much of it very cheap.

The CHAIRMAN. I was out to Kansas City, a short time ago, and I saw the new passenger station almost as high as the dome of the

Capitol, and I wondered what utilitarian purpose there was connected with the building of such a station as that—there was no revenue from it.

Mr. BARLOW. Mr. Rea, of the Pennsylvania, on the witness stand, said that the Pennsylvania Railroad, as I recall it, built the terminals in New York because he thought that it was proper that the greatest railroad in America should have a station of that kind in the metropolis of the country.

The CHAIRMAN. But it seems to me that the gentlemen who get the benefit of it ought to pay for it.

Mr. DOREMUS. As a general proposition, under normal conditions, does the through rate from coast to coast, control the rates from intermediate points to the coast?

Mr. BARLOW. From intermediate points to the coast, yes; in a general way. That is to say, it has been the policy of most of the roads—not the policy of one road—to place Chicago, St. Louis, Detroit, Toledo, and Atlanta on a system of rates that will permit them all to sell their goods in competition with the water-borne traffic, whether from the United States or Europe, at San Francisco.

Mr. DOREMUS. Now, that being true, I suppose it necessarily follows that the lower the through rate from coast-to-coast points, the lower will be the rate from intermediate points to the coast.

Mr. BARLOW. No higher rate from the intermediate points to the coast has been the rule in the past, to the coast city.

Mr. DOREMUS. If the through rate from coast to coast controls to a large degree the rate from intermediate points to the coast; then, doesn't it necessarily follow that the higher the through rate, the higher will be the rate from intermediate points to the coast?

Mr. BARLOW. I do not just follow you there.

Mr. DOREMUS. Well, let me see if I can state it in another way. Let me illustrate the point I am getting at in this way: A manufacturer in Chicago has a competitor on the Atlantic seaboard. Both of them are reaching out for the Pacific coast business. The manufacturer on the seaboard can use the water route by way of the canal. The manufacturer in Chicago can not. In order to compete for the Pacific coast trade the Chicago manufacturer must have a rate westward that is fairly competitive with the water route by way of the canal.

Mr. BARLOW. Yes, sir.

Mr. DOREMUS. If he does not get that competitive rate he loses the business?

Mr. BARLOW. Absolutely.

Mr. DOREMUS. And if the railroad does not grant him that competitive rate the railroad loses the business?

Mr. BARLOW. Absolutely.

Mr. DOREMUS. Now, here is what I am trying to get at: That being so, isn't it to the interest of Chicago, Cleveland, Youngstown, Detroit, St. Louis, and Niles, Mich., the home of my friend Hamilton—

Mr. BARLOW (interposing). And where I was born.

Mr. HAMILTON. I congratulate you. [Laughter.]

Mr. DOREMUS. Is it to the interest of all those points that the water rate from coast to coast should be as low as possible?

Mr. BARLOW. Commensurate with a fair profit and with a stability of service; yes. But if competition runs to that ruinous condition where the service is impaired or eliminated, which would be the result if there was no profit in the traffic, then we would all suffer from the elimination of the service. But a reasonable rate—that is reasonably profitable to the boat line—would be a benefit to all of us if we enjoyed a competitive relation with that rate.

Mr. DOREMUS. And the converse of that proposition would also be true, would it not, that if you made any material increase in the through rate by way of the canal it would be detrimental to these cities to which I have referred?

Mr. BARLOW. I do not just follow that either. I beg your pardon, will you repeat it?

Mr. DOREMUS. I think you admit that the through rate from coast to coast controls to a large extent the rates from intermediate points to the coast.

Mr. BARLOW. It does.

Mr. DOREMUS. That being true, the higher the rate, we will say, from New York to San Francisco, by way of the canal, the higher will be the rate from Chicago by rail to San Francisco?

Mr. BARLOW. Yes, sir; I presume so, up to the point where the rate is reasonable and fair.

Mr. DOREMUS. Now, isn't that true not only as to Chicago and Detroit, Cleveland and Niles, but also to the entire section of the United States, we will say, lying between Alleghany and the Rocky Mountains?

Mr. BARLOW. I should think it would be; yes. But that condition, as you define it, must be confined—and is naturally confined—in great measure to the point affected by the unusual competition.

Mr. DOREMUS. Now, I did not hear your testimony yesterday. What, in your judgment, would be the effect upon the rate from coast to coast of the adoption of this bill? I am speaking now of the all-rail route.

Mr. BARLOW. My judgment is this: If we had a rigid fourth section, it would permit of only a very limited competition by the all-rail lines in the Pacific coast traffic proper. That, of course, would advance your ocean rates. It would possibly eliminate the entire central part of this country from any commercial relations with the cities on the Pacific coast and confine the interchange of commerce to the seaboard ports to a great and major extent. San Francisco would then be compelled, substantially, to have all her commercial relations on the Atlantic seaboard, to the exclusion of Chicago, the benefits which she may derive from buying in Chicago, and we may derive by selling to her, which, in my judgment, would be an unfortunate situation.

Mr. DOREMUS. I thank you very much. That is all I have.

Mr. ESCH. There is just one question I have: Since the 15th of March rates to the intermountain country, westbound traffic, are the same as to Pacific coast terminals?

Mr. BARLOW. In some instances, yes; in other instances it is lower to the intermountain country on some commodities than to the coast.

Mr. ESCH. The justice of the claim made by intermountain representatives to this equalization of rates, intermountain and Pacific

coast terminals, is based upon the fact that they are nearer to the sources of production here in the East?

Mr. BARLOW. Yes, sir.

Mr. ESCH. If that contention is well founded, why are they not entitled to claim a lower rate than the rate to the Pacific coast terminals?

Mr. BARLOW. Under present conditions the rates from Chicago to Reno, Spokane, should be less than to Portland or San Francisco on every commodity transported.

Mr. ESCH. They are now, you say?

Mr. BARLOW. They are not; but they ought to be now, because of the fact that there is no extraordinary controlling condition that fixes the rate at San Francisco.

Mr. ESCH. Other than the factor of water transportation.

Mr. BARLOW. Yes, sir.

The CHAIRMAN. Does any other member of the committee wish to ask Mr. Barlow any further question?

Mr. SANDERS. I would like to ask Mr. Barlow a question or two, Mr. Chairman, bearing strictly on the bill.

Do you think that water transportation, not destructive of rail, is a good thing or a bad thing? Now, you can answer that yes or no.

Mr. BARLOW. Water transportation not destructive?

Mr. SANDERS. Not destructive of rail; is it good or bad?

Mr. BARLOW. Good, because it adds to our total transportation facilities.

Mr. SANDERS. Then, is any system of law that permits—now, remember I am not saying any system of law does permit—but is any system of law that permits the destruction of water transportation by rail good or bad? Just answer yes or no. I don't want to get into any argument.

Mr. BARLOW. That is like asking me have I stopped beating my wife. [Laughter.]

Mr. SANDERS. But is any system of law that permits the destruction of water transportation by rail good?

Mr. BARLOW. No; I don't think we ought to permit the destruction—

Mr. SANDERS (interposing). That is all I want to know.

Now, another question: If there is a system of law on the statute books, or a series of decisions by the Interstate Commerce Commission—remember, I do not say there is, but if there is—that permits the rail communication to destroy water communication, ought that condition to be changed by Congress or not?

Mr. BARLOW. I can not answer that yes or no, Mr. Sanders.

Mr. SANDERS. You don't know.

Mr. BARLOW. I do know, but I can not answer it yes or no.

Mr. SANDERS. Then answer it in your own way.

Mr. BARLOW. The question would then be this: What is the class of water transportation that you have?

Mr. SANDERS. I am just making an ideal illustration. I have not cited any opinions or any law. I am asking the direct question—if there is a system of law or a series of decisions of anybody that permits the destruction of water transportation by rail, is that a good thing for the country at large or not?

Mr. BARLOW. That would depend entirely upon circumstances and conditions. If to have a law that will prohibit that we must pay rates that will permit a scrap heap of a boat line to run, I would say you had better let it alone the way it is now. Let me illustrate that, if you please, by referring to the Goodrich Line between Chicago and Milwaukee. There is a steamboat line that has kept itself modern in every sense of the word. They have bought and put on fast steamers, they have good terminals in Chicago and Milwaukee, and their rates between Chicago and Milwaukee are higher than the all-rail rates, and they do about all the business they want to carry. Why? Because their service is so infinitely better than the all-rail lines.

Mr. SANDERS. Now, I will take your illustration right there. Would you indorse a system of laws or a system of decisions of any body of men that would permit the destruction of that all-water route?

Mr. BARLOW. No; I would not, under those conditions, if it is a modern steamship line. I think that would be unwise.

Mr. DECKER. I want to ask one question there, because I can not see the point. I would like to ask you this question, Mr. Sanders.

Mr. SANDERS. I will answer it if I can.

Mr. DECKER. Don't you believe that horse transportation and automobiles are both good things?

Mr. SANDERS. Yes.

Mr. DECKER. Well, do you think that we have a right to let the law exist so that it will permit the automobile to put the horse out of business?

Mr. SANDERS. The automobile can not put the horse out of business.

Mr. DECKER. Why?

Mr. SANDERS. Because no automobile has ever been able to put a horse out of business in the field of transportation that the horse is specially adapted to.

Mr. BARLOW. That is my point in regard to the Goodrich Line.

Mr. DECKERS But this is the point I am getting at: What business is it of the law to permit or to fail to permit the automobile to put the horse out of business if he can?

Mr. SANDERS. None in the world except this: That if we had a system of laws that would prohibit the use of a horse, the use of horse transportation where the horse would render better service than motor transportation, then I would say that such a system of laws was absolutely ridiculous.

Mr. DECKER. You jumped over the word "permit" and got on to the word "prohibit." I agree with you on "prohibit," but not on "permit." I believe in laws that will permit anything to put anything out of business that will do it honorably.

Mr. SANDERS. I have used the word "destroy," which is to prohibit. When you destroy anything—my use of the words "all-rail route destroying a water route." carries with it the prohibition.

Mr. BARLOW. I would invite the Congressman's attention to the fact that under the laws on the statute books to-day that could not be done, because the commission may determine the extent to which they may make rates that you might fear would bring that about, and I think Congress had that in mind when they made the law.

Mr. SANDERS. As a matter of fact, and not theory, do you not know that by the depression of rates and by other means the railroads, particularly in the South, where I come from, have put water transportation out of business?

Mr. BARLOW. I do not know anything about the South, Mr. Sanders. I have traveled there a good deal, but I have never made a study of the Mississippi River.

Mr. SANDERS. Now, is it not a fact that bulky, heavy freight—I will use, for instance, coal—can be and is transported over water cheaper than any rail can handle it?

Mr. BARLOW. Yes, sir; and my judgment is this—

Mr. SANDERS (interposing). Isn't that a fact?

Mr. BARLOW. Yes, sir.

Mr. SANDERS. Now I want to ask you another question about that. There is deep water from the coal fields, from the headwaters of the Ohio River clear down the Mississippi River to the mouth of it. The time was in the recollection of people who are living to-day—myself amongst them—when the coal of that country was floated down the river by barges. To-day that coal is hauled in freight cars. Is that a healthy or an unhealthy condition?

Mr. BARLOW. Well, that would depend entirely upon the benefits which the public got out of it. If the public is receiving more benefit by moving that freight by rail than it would to turn it to the water, I would say let the rail haul it.

Mr. SANDERS. Well, assume, which was the fact, that we got our coal cheaper by water than by rail.

Mr. BARLOW. I see no reason why the water line should not operate. My judgment is this, if I may be permitted to say so: No railroad restricted by the present law that the rate they must make must be more than their out-of-pocket expense, can successfully compete with a well-organized, responsible boat line that has provided itself with terminals where the haul is 500 miles or over. They can not do it, and you need not have any apprehension of driving any man out of water transportation who equips himself to do that business that way.

Mr. SANDERS. Does it not assume that the out-of-pocket cost is made up honestly?

Mr. BARLOW. We have the Interstate Commerce Commission to determine that, and I believe they will determine it fairly.

Mr. SANDERS. But I asked you a question, would you not presume that the out-of-pocket cost was made up fairly and honestly?

Mr. BARLOW. Yes; we must assume that; and we assume that the commission will determine whether it has been made up honestly or not.

Mr. SANDERS. Now I will ask you a question as a traffic man. If this bill would be so amended so as to protect the water routes of America from such discrimination and practices as have driven these boat lines out of business, would you object to that or not?

Mr. BARLOW. Why, I must answer that no, on the broad statement, without any argument over it.

Mr. SANDERS. I do not want any argument.

Mr. BARLOW. But the question is, What is going to be the result upon the public? Are we going to increase transportation charges to the public merely to build up water transportation?

Mr. SANDERS. Of course not.

Mr. BARLOW. Then your answer and mine would fit nicely together.

Mr. SANDERS. Then, as a matter of fact, I misunderstood you the other day when I got the impression that you were opposed to water transportation per se.

Mr. BARLOW. I beg your pardon; I did not touch on that.

Mr. SANDERS. I say, I misunderstood you, because that is the impression I got. You are not opposed to water transportation per se, if it can be handled to the benefit of the public at large?

Mr. BARLOW. Certainly not.

The CHAIRMAN. Right in that connection, what do you think of the policy or the practice of allowing a railroad rate to be fixed or determined by potential water competition, where there is no water competition in fact?

Mr. BARLOW. The consideration of the influence of potential water competition should be surrounded with safeguards, and it is so surrounded under the law now, and it was not before the law was amended. Some railroads thought they were justified, because there was a little creek running through a town, to make water-compelled rates, and that led to unjust and undue discrimination; but under the law now it has been stopped. The potentiality must be apprehensive, and I think that wherever a railway company sees the possibility of losing traffic, and the possibility of the disturbance of rates by the putting on of boat lines, they are well within their right to come before the Interstate Commerce Commission under the present law, lay the facts before them, and let that body determine whether the conditions, either actual or potential, are such as would warrant a departure from the prohibition under the long and short haul law. That is where the speaker would like to continue the authority.

The CHAIRMAN. Well, while there is actually no water transportation in existence, I do not mean no water routes, but such a one as was referred to yesterday.

Mr. BARLOW. Mr. Chairman, your water is there, if it is navigable. The only question of competition is the putting on of a boat.

The CHAIRMAN. Well, Mr. Devant yesterday referred to the fact as to the rate on cotton from Memphis to New Orleans—I mean rail rates—both on the Missouri Pacific line on the west side of the river and the Yazoo and Mississippi Valley line on the east side, that that rate from Memphis to New Orleans was made by reason of the Mississippi River, the rate that the Mississippi River or boats on the river could make. Then, if the boat is actually carrying cotton at that rate, that is real existing water competition, but he admitted a few minutes later that there were not any boats from Memphis to New Orleans; therefore there was only potential or possible water competition. Now, where no competition actually existed, if these railroads carry cotton that way—as everyone would rather ship by the railroad than the river, at the same rate——

Mr. DECKER. Why would they?

The CHAIRMAN. On account of the loading and unloading facilities, and the quicker movement.

Mr. BARLOW. And the responsibility back of the service. The financial responsibility back of the service is a great element also.

The CHAIRMAN. Then I want to ask you this: Is it wise to permit railroads to make a rate, not to meet a condition but to prevent any condition of the sort ever arising?

Mr. BARLOW. Well, it would appear academic that we ought to say no to that; yet I think that is a question of dispute, and the commission ought to determine it.

The CHAIRMAN. The Government has spent millions out of the pockets of the people to improve navigation from Memphis to New Orleans, and now a Government agency is preventing the development, or rather the accomplishment, of the intended purpose of Congress in making these appropriations.

Mr. BARLOW. True, the Government has spent millions. Now ought it to take millions more out of the shippers' pockets simply to put on a boat line?

The CHAIRMAN. How are you taking it out?

Mr. BARLOW. You would if you increased the rates.

The CHAIRMAN. But if both of them went on and carried cotton at the same rate, how are the people hurt by having a boat line?

Mr. BARLOW. Mr. Devant said the rates had more than doubled, yet no boats had come back.

Mr. SANDERS. I want to ask one question right there, as a citizen: Do you mean to say, with the actual knowledge of conditions of railroad transportation in America, where there isn't an industry, I dare say—I am going to ask a long question, and I want you to follow it—where there isn't an industry, I dare say, that has not suffered from what is known as car shortage, not since the war but before; where the greatest authority on railroads, perhaps, that this country has ever produced—Mr. Hill—stated several years ago that we would have to spend billions on top of billions every year from now on to get the railroads in a condition to handle our traffic—do you mean to say that under those conditions the proper governmental policy is to permit the railroads to go to the Interstate Commerce Commission, unable to handle the very traffic that is offered them to-day, unable to handle the traffic that was offered them before the war, and yet to put in a rate on the water, not for the purpose of competing with an existing line, but for the absolute, express purpose of keeping another method of transportation from benefiting the people? Do you mean to say that that is a good governmental policy?

Mr. BARLOW. I mean to say it would be better governmental policy to leave the determination of those questions to the Interstate Commerce Commission rather than to undertake to legislate about them.

Mr. SANDERS. Hasn't it been the policy of this Government from the very beginning, both by Nation and by State, that if bodies intrusted with the interpretation or the execution of the law do not execute it or interpret it as the legislative body intended they should, that those laws are amended all the time and every time?

Mr. BARLOW. Sometimes they are; not always.

Mr. SANDERS. Well, to come back to the original proposition, everybody in this country knows that the railroads can not handle the traffic even in peace times.

Mr. BARLOW. That is true.

Mr. SANDERS. Now, do you mean to tell me that under those conditions this Congress should not legislate so as to prevent a railroad, not competing with an existing line, but putting its rates so that a

competing water line can not even be established? Is that good business for the people of this country?

Mr. BARLOW. Well, I have to come back to my original answer. I think it is wiser to leave the determination of that question to the Interstate Commerce Commission than it is for Congress to undertake to legislate, because all the conditions are dissimilar. You might say Congress could legislate between New Orleans and Memphis, but that is not all of it. That is only one part of it.

Mr. SANDERS. Well, we would not legislate between Memphis and New Orleans, but we would establish a policy, Mr. Barlow. The policy would simply be this: The legislative policy that no coordinate branch of the Government should and could under the law, by any decree, prohibit the establishment of lines of transportation absolutely essential to the well-being of all the people of this country.

Mr. BARLOW. That is a broad principle, which I would agree with you on. We can't help that; but in the determination of that—

Mr. SANDERS (interposing). And you leave that to the commission. But the policy of the Government must be declared by the legislative branch, must it not?

Mr. BARLOW. Certainly; and my idea has been that you have determined your policy, and it is now voiced in the fourth section.

Mr. SANDERS. And fixed; and, no matter how it works, our hands are tied and we can not change it. Is that your idea?

Mr. BARLOW. No.

Mr. SANDERS. Of course not.

Mr. BARLOW. But I say it would be unwise to change it at this time.

Mr. SANDERS. Why should it be unwise to change it at this time, when we are more cramped for transportation than we have ever been in our history?

Mr. BARLOW. Because, in my judgment, the Interstate Commerce Commission views this question just as broadly as we do, exactly, as they are going to determine it in the light of the broad view of it; and the old methods and practices, in my judgment, never will come back into life again.

Mr. SANDERS. And under the law as it has been administered practically every steamboat has been driven from every river. Is that good policy?

Mr. BARLOW. Mr. Sanders, that happened long before you amended the law in 1911.

Mr. SANDERS. I understand that.

Mr. BARLOW. I think if we had had the law in the first place that we had in 1911 the situation might have been materially better and different.

Mr. SANDERS. Do you know, Mr. Barlow, that one of the reasons why the steamboats have been driven off the Mississippi River before they had any law was that the railroads would blacklist merchants and planters who shipped one bale of cotton by steamboat? Do you know that?

Mr. BARLOW. I do not.

Mr. SANDERS. And would refuse to haul one pound of freight for them?

Mr. BARLOW. I do not know that.

Mr. SANDERS. I do, because I lived there.

Mr. BARLOW. I do not know that about the Mississippi River, but I think it used to be done in San Francisco.

Mr. SANDERS. And do you know, further, that the railroads have tried to grab every river front and every landing so as to prevent steamboats from landing on the river?

Mr. BARLOW. Unfortunately, I do know that.

Mr. SANDERS. And, then, don't you think that, knowing those conditions, Congress should do at least something to restrain the hands of the railroad when it reaches out to crush the life, not out of an existing line, but to say to capital, "You shall not put a boat on the river. We can not handle the freight ourselves, but you shall not handle a pound of it"?

Mr. BARLOW. I think you have done that. I think you have done it exactly the way you ought to have done it in the amendment in 1911 to the fourth section.

Mr. SANDERS. Why, it doesn't reach it in any way, shape, or form.

Mr. HAMILTON. Let him amplify that, Mr. Sanders.

Mr. BARLOW. I think you have done exactly what you ought to have done in the very beginning of the law, and you would have saved the situation if you had done it; and I want to say, further, that the National Traffic League does not urge changing the present law as it stands to-day.

Mr. HAMILTON. Will the law as it stands to-day tend to restore river traffic?

Mr. BARLOW. I think it will, in time.

Mr. SANDERS. As a man who lives on the Mississippi River and wants to ship on the river, I know what I say when I state that my brother from Chicago does not know one single thing about the condition, if he says that the present law will reach it—not one solitary thing about it. You will never turn a wheel under that law.

Mr. BARLOW. Isn't it profitable to haul cotton from Memphis to New Orleans at \$1.25 a bale by steamboat?

Mr. SANDERS. Yes, sir.

Mr. BARLOW. That is the rate to-day.

Mr. SANDERS. Yes, sir.

Mr. BARLOW. Now, is there any condition there that disturbs the river situation? They used to haul it for 40 cents when there was no railroad competition, didn't they?

Mr. SANDERS. Yes.

Mr. BARLOW. Now the all-rail rate is \$1.25.

Mr. SANDERS. Yes.

Mr. BARLOW. Why don't the boats go up there and make a \$1 rate? The railroads can not reduce the rate to meet the rate without coming to the Interstate Commerce Commission.

Mr. SANDERS. The fact of the matter is: Whenever a boat would start from Memphis to New Orleans—three men could not gather together in New Orleans or in Memphis with the purpose of putting a boat on but what there would be an application made to meet potential competition of a boat that is still within the brain of the designer, and the rates would be reduced and people would say, "What is the use?" That is the situation, and I know it, and everybody that lives on the river knows it.

Mr. BARLOW. I doubt if you need apprehend any fears of that kind. They used to do that.

Mr. SANDERS. They have reduced freight rates to-day, Mr. Barlow, and you know it, and I know it, to meet phantom boats—boats that are only in the dream of the imagination of the railroad magnate.

Mr. BARLOW. Not since the law was amended in 1911. They have not done it to my knowledge.

Mr. SANDERS. They have not done it since, because the bill is new. It was only passed last March.

Mr. BARLOW. They did do it before that.

Mr. SANDERS. Yes; of course they did.

The CHAIRMAN. What is your judgment of the policy that seems to be included in this decision of the Interstate Commerce Commission, 30 I. C. C., 263:

“There is a disconnected service between New York and Memphis, regular boats plying between Natchez and Vicksburg and Memphis. The water competition is to be regarded as potential and not actual, and the testimony in this case indicates that any material advance in the rates from New York to Memphis”—supposed to mean railroads—“would without doubt result in the reestablishment of active competition on the Mississippi River.”

And they provided in the possibility of the reestablishment—which admits that they once had it and that it is gone, and if they increased railroad rates from New York to Memphis it would no doubt result in the reestablishment of active river transportation, and so disallowed it. That is the potential competition I referred to a moment ago.

Mr. BARLOW. Generally, I think potential competition is worthy of consideration and determination. I could not pass judgment on this decision in the language of the commission, because I am not conversant with the testimony on which they base it. I only know the decision. What the testimony was that lead to that finding I do not know.

The CHAIRMAN. The conclusion is that if they increased the rail rate from New York to Memphis it would result in water competition, therefore they declined it.

Mr. BARLOW. I presume the commission from the testimony offered in that case—and it was very bitterly tried—had reason to find that way. I acquiesced in it, as I do with the findings of all Government bodies.

The CHAIRMAN. So do I, unless—

Mr. BARLOW (interposing). And I must assume that where I do not agree with it, it is because I do not understand all the facts and circumstances connected with the case.

Mr. SANDERS. I do not think it is the duty of a good citizen to acquiesce in a decision of a court or of a legislative body when that decision is against what he personally thinks is public policy and for the vast interest of the whole people. He ought to protest.

Mr. BARLOW. We reserve the right to appeal, and we do; but we soon learn to take the decisions of the courts and bodies and go ahead.

Mr. SNOOK. Isn't the argument you gentlemen make rather for a change of the personnel of the commission than a change of the law?

Mr. BARLOW. I think the discussion leads to a criticism of the commission rather than of the law. That is to say, that if the law was interpreted by this body of men, the Interstate Commerce Commission, on the lines which the questions indicate, then the law would be all right.

The CHAIRMAN. I am assuming that they interpreted it according to existing law. This bill proposes to change existing law.

Mr. BARLOW. No; they have exercised the discretion which the law gives.

Mr. SNOOK. There is no question under the present law but what the Interstate Commerce Commission, if they saw the facts as these gentlemen pointed out, they ought to make a decision in accordance with their line of thought.

Mr. BARLOW. Not at all.

Mr. SNOOK. Then it is a criticism of the Interstate Commerce Commission.

Mr. SANDERS. It is a criticism of the law-making body in permitting digression where this digression ought not to be permitted.

Mr. HAMILTON. And you would avoid that by a legislative declaration of policy?

Mr. SANDERS. Absolutely; and that is no reflection on any court or commission.

Mr. DECKER. Just for my own information, don't your policy result in asking for a law that will prevent the railroads from hauling freight cheaper than the boats, even though they can do it as well and better, and at a profit?

Mr. SANDERS. No, sir; under no circumstances.

Mr. DECKER. Well, under this law, as I now understand it, and as it has been explained, the railroad can not haul any freight except at a profit.

Mr. SANDERS. That is not the fact.

Mr. DECKER. Then it is the fault of the Interstate Commerce Commission, and there is no use of complimenting them.

Mr. SANDERS. It is not the Interstate Commerce Commission's fault, either, if you will pardon me for interrupting you.

Mr. DECKER. Well, the law says—

Mr. SANDERS (interposing). That they can not—

Mr. DECKER (continuing). The law says that they can not.

Mr. SANDERS. The out-of-pocket loss must be at least paid, and plus.

Mr. DECKER. Does the law say that, or a decision?

Mr. SANDERS. That is a decision. It is court-made law; but it is in harmony with the general provisions of the Interstate Commerce Commission.

Mr. DECKER. And it is in harmony with the law Congress passed, that rates must be reasonable and just.

Mr. BARLOW. If you want to meet the issue, Governor, which I think you have in mind, I think we should approach it from the fourth section—long and short haul.

Mr. SANDERS. Yes; I have got an amendment to this section. I am perfectly frank to say that I would not vote for the bill as it stands to-day.

Mr. BARLOW. Now, you have got another section that prevents the railroad from increasing rates made to meet water competition; but you have got a little provision in there that says, "unless for some reason other than the elimination of water competition." And the word "elimination" has been interpreted to mean the doing of something on the part of the railroads at the present time that absolutely drove the boat off. Now, if you want to penalize the railroads for attempting to drive off the boats it seems to me you might find some relief in that section rather than the long and short haul.

Mr. SANDERS. But we have got the section up. Let's get relief now.

Mr. ESCH. This is a paragraph of section 4. This is part of the same section.

Mr. DECKER. I want the governor to answer this question: If the law as it stands now does not allow the railroad company to haul freight except at a profit, what right have we to pass a law that will require them not to haul freight when they can do it at a profit, in order that a boat line may be established and live? That is the point.

Mr. SANDERS. That is not the point at all, if you will excuse me. The point is this: Take this very case that the chairman just quoted from. There is a case where the railroads asked to make a rate to Memphis. Grand Junction was involved. Grand Junction is a good deal shorter haul than Memphis, and it costs less to make the short haul than it does the long haul, and yet they charged more for the short haul. For what purpose? Not to make money by going into Memphis, but to keep out the potential opposition of a boat line, a boat line absolutely essential to the public welfare, yet they keep it out of the river by hauling freight to Memphis at a loss.

Mr. DECKER. Is it at a loss? Hasn't the commission then made an error that they have let that railroad company haul at a loss?

Mr. SANDERS. I think so.

Mr. DECKER. Then that is against the law. Then the fault is not the fault of Congress but the fault of the commission.

Mr. SANDERS. Well, one of the biggest railroad men in the country, a man who ought to know, told me less than a year ago that there was no human being on earth, himself included, who could understand the system of bookkeeping adopted by the railroads of America; and I am prone to believe that what he said was true, and I am prone to believe that when they want to make a rate to a seaport or to a river town that they can figure any out-of-pocket cost that they want and convince the commission that the rate at least covers out-of-pocket plus.

Mr. DECKER. Well, it looks to me, too, that the Interstate Commerce Commission has got a hard job when they try to determine those things.

Mr. SANDERS. They have, and what we ought to do is to face the hard job and pass proper legislation where this discriminatory practice could not be carried on.

Mr. DECKER. I know, and we are trying to discuss between us what would be proper legislation. Would it be safe to fix it so that they

could not haul it at a profit and still at a rate cheaper than the boat would want to haul it?

Mr. ESCH. The commission, of course, has only got the power to fix maximum rates and charges. Do you think that the river transportation could be revived if the commission were given the right to fix the minimum charge?

Mr. BARLOW. I think it would assist very materially, and the power to make the minimum charge should be reposed in the Interstate Commerce Commission, in my judgment.

Mr. ESCH. Wouldn't that very largely remedy this complaint that we hear from the inland water towns for failure to restore boat service?

Mr. BARLOW. I think that would go a good ways, Mr. Esch, to help the matter; yes.

Mr. HAMILTON. Are you going to propose an amendment, Mr. Esch, of that kind?

Mr. ESCH. We can not do it on this section. It would not be relevant.

Mr. SNOOK. As the law now stands Congress, as I understand it, has conferred the rate-making power on the Interstate Commerce Commission.

Mr. BARLOW. No; the railroads initiate the rates. The commission then can make the rates.

Mr. SNOOK. They can make the rates; Congress does not undertake to make rates. They have conferred that power on the commission.

Mr. BARLOW. Yes.

Mr. SNOOK. Now, the question I wanted to ask you is this: The law, this proposed law, is in the nature of fixing a rate—that is, it says that the short rate shall not be any larger than the long rate.

Mr. BARLOW. It is in the direction of fixing the measure of the rate.

Mr. SNOOK. It is in the nature of fixing the rate.

Mr. BARLOW. The basis of the rate.

Mr. SNOOK. Now, if Congress should take that power and itself pass this law at the behest of one class of people who think they are discriminated against, what effect do you think it would have in the future as to different localities coming to Congress and asking them directly to fix rates that should govern?

Mr. BARLOW. It would have the tendency to encourage that. And, if I may be permitted to say, I think Congress should delegate to the commission the power to determine all those things and only indicate the general policy of the Government and leave it to the intelligence of a body of men who have the time and patience to inquire into every specific instance and case and determine that on its merits, having in mind the general good of all. I should think it would be immensely unwise for Congress to undertake to specialize in this transportation question.

Mr. SNOOK. Now, I want to ask this question: Would it have a tendency to have any community that thought they were discriminated against come to Congress and ask them to fix the rates in the first instance or to fix a principle like this within which the rates must be adjusted?

Mr. BARLOW. Undoubtedly if a certain community comes before the commission and does not get the relief they desire, and then can

come to Congress and get it, they will all come here, of course, and you will be burdened to death, and you will be the rate-making power, rather than delegating it to some other men who have time for it.

Mr. DECKER. As a matter of fact we are the rate-making power.

Mr. BARLOW. You are, but you have delegated that, and wisely, we think.

The CHAIRMAN. Mr. Barlow, did you state this morning the number of these fourth-section applications? My recollection is it was very few of them that were based on water competition.

Mr. BARLOW. I gave the memorandum to the reporter. It is in the record in full. But only 24 of the, substantially speaking, 11,500 applications had any relation whatever to this transcontinental intermountain situation.

Mr. ESCH. Twenty-eight.

The CHAIRMAN. But the whole number that had reference to water competition, according to my recollection, was very few as compared to the total.

Mr. BARLOW. I do not recall that my statement separated the applications as between routes, but the commission can undoubtedly give you that information.

The CHAIRMAN. I thought your statement gave that.

Mr. BARLOW. No.

Mr. DECKER. There is just one other question. Doesn't the commission in a sense have a right, in a practical way, to determine the minimum rate that is fixed on this water competition at least, because, as I understand it, when the railroad makes an application to put in a rate, under its power to see that these rates are not discriminatory then the commission says to the railroad, "We will investigate this and see whether you have got this so low that it in fact discriminates against some other inland town or in favor of a seaport town to a greater extent than its natural advantages entitle it to." The commission is in fact answering that question, compelling a minimum rate, on the grounds of discrimination. It places the complainant and the intervenors in rather an awkward situation, because we intervene in a case, either one side or the other, and we do not expect a split decision; that is to say, a decision that will compel the advance in rates to relieve discrimination, but only orders the removal of the discrimination. Now, I think we ought to approach the question direct and give the commission power to make a minimum rate in the first place. All you can ask is that they do not make the rate fixed, because it is discriminatory.

Mr. BARLOW. Yes; and they issue an order that the discrimination must be removed.

Mr. DECKER. And they might then in fact let the rate that causes the discrimination in the first place remain still low enough to cut out legitimate shipping, and lower the rate at some other place and remove the discrimination in that way.

Mr. BARLOW. No; it works this way: A complains of the rates from B to C. The commission finds that the rates from A to C are just and reasonable, per se, but that the rates from C discriminate against A; and they call upon the roads to relieve, to remove the discrimination, and consequently the rate from B to C is advanced, because the rate from A to C is pronounced just and reasonable. In that way they work the minimum rates. My opinion has always been

we ought to give them the power right off, and we would know in each one of these cases that it was not only the maximum rate but the minimum rate that was involved.

The CHAIRMAN. The railroads would fight any such proposition as that very strongly, wouldn't they?

Mr. BARLOW. I don't think so.

The CHAIRMAN. Minimum rates?

Mr. BARLOW. I don't think so. They have gotten by that, because it is being exercised by the commission in the manner I have described, anyway. Now, you will see, as lawyers, A complains against rates to B, and I come in as an intervenor because of the effect it will have upon Chicago; and they say to me, "Are you for or against the complaint?" I am neither. I don't want anything done that will affect Chicago; but I am told I must take a position one way or the other. I want to intervene as my interests appear. Well, then, I find that a decision has come out that pronounces one rate just and reasonable, the other discriminatory, calling upon the roads to remove the discrimination, and the rates to Chicago are increased, and I never appeared in the case.

A VOICE. Will the chairman direct Mr. Barlow's attention to the provisions of section 15, as now amended, which in that contingency would require a fifteenth-section application for authority to advance the rates, and an affirmative showing at that time, at which Mr. Barlow could be represented?

The CHAIRMAN. The law as it exists now?

A VOICE. The act of last August.

Mr. HAMILTON. Mr. Chairman, there is just one question that I wanted to ask. This morning, Mr. Barlow, you stated the rule, if I understood you correctly, under which the Interstate Commerce Commission proceeds as to rates. For illustration, you stated, as I understood it, that where one line was, say, 100 miles long, another 150 miles long, that the rates on both lines were uniform for 100 miles; that after the 100-mile point was passed on the long haul, that another rate might be put into operation, a long-haul rate.

Mr. BARLOW. A greater rate.

Mr. HAMILTON. So that it might happen that there might be a substantial difference in rates between point A and point B on the long-haul run, point B being the farthest of the initial points, and the rate might be much less than the rate at A, although the distance between them might not be over 10 miles. That is about the way I understood you it might work out.

Mr. BARLOW. I don't quite follow that. I can state it in my own way in this way: Say the rate from Cincinnati to Detroit is governed by the short-line mileage. Now, the Cincinnati Northern wants to come into Jackson. You are familiar with that territory.

Mr. HAMILTON. Yes.

Mr. BARLOW. The distance from Cincinnati to Detroit, say, is 250 miles. The Cincinnati Northern would come in by Jackson. For 250 miles, say, as a general rule, it would not be permitted to charge more than the 250 miles to Detroit, but for the additional mileage from Jackson to Detroit, there the commission would give them relief, under the fourth section, to charge a higher rate than the lower distance rate from Cincinnati to Detroit.

Mr. HAMILTON. I understand. I had in mind an illustration that has been suggested here in the hearings, calling the short haul the cord of the bow, and the long haul the wooden part of the bow. I had that illustration in mind when I was figuring on the 100-mile run on the cord and the 100-mile run on the wooden part of the bow, the rate being uniform per 100 miles on the cord and on the bow, but beyond that on the bow, then the other rule would be enforced.

Mr. BARLOW. Now, right in that connection I came here last summer and served with the Interstate Commerce Commission on their car-service division under the Esch law, I believe it was. We found Toledo greatly congested with coal, by reason of moving so much lake coal to Toledo. I immediately suggested that we open the Cincinnati & Northern route by Jackson to take care of all the Detroit coal and get it out of the Toledo congestion. You are familiar with that, perhaps. The question immediately arose, What will we do under the fourth section to open up a condition like that and get out of the Toledo congestion, and give Detroit her coal at the Detroit rates, and open another new line? And we were immediately told that, if we required it, they would give us relief at once, and we could go on and use the line. Now, if you had a rigid thing of that kind you could not do it at all.

Mr. HAMILTON. You made the same rate for the long haul that you would for the short haul?

Mr. BARLOW. Yes; and get out of the Toledo congestion; and used another road, the Cincinnati & Northern.

Mr. HAMILTON. I see the point.

Mr. BARLOW. Is that all, Mr. Chairman?

The CHAIRMAN. That is all, unless some other member of the committee wants to ask something.

Who is your next witness?

Mr. SETH MANN. Mr. Lallier, who is here from Galveston, might be heard now, and then I shall hope to follow, and then Mr. Wetrick, and that is all.

The CHAIRMAN. Proceed, Mr. Lallier.

STATEMENT OF MR. F. A. LALLIER, REPRESENTING THE GALVESTON COMMERCIAL ASSOCIATION, GALVESTON, TEX.

Mr. LALLIER. I represent the Galveston Commercial Association, of Galveston, Tex., as its traffic manager, and I appear at this time in opposition to the bill, to the proposed bill.

I was very much surprised to hear the statement that the entire South was complaining against the present operation of the long-and-short-haul clause. I have been actively engaged in handling rates in the South for the last 10 years, in Texas, not in the eastern part of the South, and during that entire period I have not heard of one single complaint against the operation of the long-and-short-haul clause. I think that statement can possibly be explained by the fact that the case originally—the complaint originally originated in the intermountain territory, and grew out of a decision in a rate case which possibly they felt was unjust and unfair to them. I recall some four or five months ago—I do not remember the exact date—at any rate I recall receiving various circulars and letters inviting

us to unite in support of this bill. It was stated in those circulars and letters that it would cure all of our ills, which we had not been aware of up to that time, and we were requested to give our support to the bill. I think possibly that accounts for the fact that some localities in Texas have joined in this what might be termed complaint.

For instance, in Dallas, Tex., I was still more surprised to learn that they had joined in this complaint, because I recall that at the last hearing in the Shreveport case in Dallas, Tex., when the traffic manager representing the Dallas Chamber of Commerce was on the stand, he had one particular complaint to make regarding the existing Shreveport order which was in effect then, and regarding the curtailment of his facilities for shipping goods out of Dallas. In the July, 1916, order of the commission, in the Shreveport case, the commission had prescribed a certain scale of mileage rates which were considerably higher than the old existing State-made Texas rates. Take, for instance, first class. The old Texas commission first-class rate for the shortest distance was 13 cents. The Interstate Commerce Commission first-class rate for the shortest distance was 23 cents. Their order applied to the railroads in Texas and did not apply to the interurban routes. Dallas has several interurban routes radiating from that city at various points. It was a specific complaint of the traffic manager of the Dallas Chamber of Commerce that this order had limited to a great extent the shipment of their goods out of Dallas to the interurban routes, because the rates were lower, they applying the old Texas rates while the railroads were applying what is termed the Interstate Commerce rates—the Shreveport rates, I mean to say. He stated that his facilities were not sufficient to ship tonnage out of Dallas on the interurban as they then existed, and certainly they could not be handled by the interurban routes. Now, with the rigid fourth section long-and-short-haul clause he would still be very greatly restricted to certain routes. In other words, he would be restricted to his direct routes out of Dallas and would not get the advantage in shipping over the circuitous routes. That is because all the rates in Texas are mileage rates. They are uniformly mileage rates, and the mileage rate is the maximum. We have had mileage rates for a great many years before the Shreveport case ever arose, and the commission adopted that scheme of rate making in its various decisions in the Shreveport case.

As an example of how that would work, we will take, for instance, the distance from Houston to Shreveport, which is 235 miles over the Houston, East & West Texas Railway, one of the Southern Pacific Lines. That entire territory is covered by the Shreveport case. The first-class rate under the latest decision of the commission for that distance would be 85 cents. That is the most direct route between Houston and Shreveport, and is the rate-making route.

The CHAIRMAN. You mean the Texas commission?

Mr. LALLIER. No; the Interstate Commerce Commission's rate. It is 85 cents. It is an interstate rate, because it goes to Shreveport. But the Houston, East & West Texas is the most direct route between those points. They have very strong competing routes, formed

by two of the Gould lines, the International & Great Northern, operating from Houston to Long View, in a northeasterly direction, and the Texas & Pacific Railway, which operates from New Orleans westward through Shreveport and Dallas to El Paso. The distance via the International & Great Northern through Long View and then in connection with the Texas & Pacific from Houston to Shreveport would be—I don't recall the exact distance, but it is approximately 275 miles.

Marshall, Tex., is a point located on the Texas & Pacific approximately 40 miles west of Shreveport.

The CHAIRMAN. And also on the International & Great Northern, isn't it?

Mr. LALLIER. No; it is not on the International & Great Northern. It is on the Texas & Pacific, approximately 40 miles west of Shreveport. The haul via International & Great Northern and the Texas & Pacific to Houston is a joint-line haul, and joint-line rates in that section of the country are uniformly higher than single-line rates until they reach their maximum. For instance, the joint-line first-class rate is made by adding a differential or an arbitrary, or whatever it may be termed, to the rates which apply to single-line hauls for similar distance.

Mr. HAMILTON. Will you state that again?

Mr. LALLIER. I say the joint-line rate is made by adding a certain arbitrary, or a differential in this case—in first class it is 8 cents—to the rate for a single-line haul of a similar distance. So that the rate of the joint line, the first-class rate, from Houston to Shreveport via this longer competing joint route would be for the distance of 275 miles, 97½ cents, while the rate via the Houston, East & West Texas is 85 cents. There Shreveport has a rate of 85 cents by the Houston, East & West Texas, and if the longer route does not participate in the traffic, they still have that 85-cent rate.

Now, Marshall, as I said, is 40 miles west of Shreveport, and it is practically 235 miles from Houston—just about the same distance from Houston on the joint route that Shreveport is on the single-line route, but their rate, of course, will be 8 cents higher than Shreveport's rate, because it is a joint haul, which would make it 93 cents. The Marshall rate is 93 cents; the Shreveport rate by the short route is 85 cents. Can there be any reason why the longer route formed by the two lines should not be allowed to participate in the Shreveport rate when Shreveport is going to get that rate anyhow? Just take, for instance, a carload of canned goods, a great deal of which moves through Galveston to points in Texas. It comes from the Baltimore district via steamship lines. It does not cost very much additional to the International & Great Northern to place a carload of canned goods in a through freight train that is going from Galveston or Houston to Long View anyway, and it doesn't cost very much additional for the Texas & Pacific to put this carload of canned goods into a through freight train which is going to move to Shreveport anyway; and certainly by meeting the Houston, East & West Texas rate they can haul it at a charge which would be in excess of the out-of-pocket cost, even if they had to haul it to Shreveport for less than the maximum rate provided to Marshall.

That is a typical example in Texas. There are probably thousands of them, and in the last decision of the Interstate Commerce Com-

mission it permits thousands of them throughout that entire section of the country, because the Shreveport case has now spread over Louisiana, and the shippers and jobbers have all had their rates—or the railroads have had their rates increased by reason of the Shreveport case. It spread to Oklahoma; it spread to Arkansas; it spread throughout the entire Southwest.

Now there has been some suggestion that possibly the longer route should be allowed to meet that Shreveport rate, but reduce the rate to the intermediate points. In that instance you would have a rate to the intermediate point which would be lower than the standard mileage scale, and you would immediately have a complaint from some point 235 miles west of Dallas, saying that they are entitled to a rate on the same level, and you would have numberless new complaints from Shreveport saying that Houston is moving tonnage mile for mile, lower mile for mile than they can move it.

The illustration I have just given with respect to Marshall, Tex., is typical of the bow-line illustration that was given the other day—Monday, I think it was. And I also recall that it was stated that the railroads almost invariably, when they found a situation like that, increased the string-line, or the direct-line, rate. Now, it is impossible to do that in Texas, because we have there a maximum mileage rate, and they can not go beyond that; it is impossible to do that wherever they have mileage rates in effect.

The CHAIRMAN. Do the mileage rates in Texas apply to interstate transportation through Texas?

Mr. LALLIER. Yes, sir; they apply to interstate transportation within that territory.

The CHAIRMAN. I say, do they apply to interstate transportation within the State of Texas.

Mr. LALLIER. Yes, sir; within the State of Texas.

Mr. SHAUGHNESSY. But they are fixed by the Interstate Commerce Commission.

Mr. LALLIER. Yes; they are fixed by the Interstate Commerce Commission at present. Formerly we had State-made rates in the State of Texas, but those State-made rates did not apply to interstate transportation; they applied only to intrastate transportation.

The State Railroad Commission of Texas has always recognized that principle. They have a rule which provides that the rate between any two given points shall be the lowest rate which can be figured by any route, and that intermediate points shall not be affected by rates so made.

We have numberless circuitous routes in Texas. There are four principal north and south trunk lines from Galveston to the northern part of Texas. The shortest line from Galveston to Dallas is the Houston & Texas Central, one of the Southern Pacific lines. The Houston & Texas Central can not handle all the traffic that moves into Houston and Galveston from the northern part of the State, nor can it handle all of the traffic that moves from Houston and Galveston to the northern district. But if the rigid long-and-short-haul clause is put into effect, as proposed by the bill, it will have to haul all the traffic, or else these three longer routes will have to charge higher rates; the shipper will have to pay higher rates for using the only lines which will be available to him, because the short line will be too congested to

use. Or if the short line could handle the business the longer roads would simply have to retire from the traffic. And since they are making a revenue by this competitive traffic, by retiring from that traffic they would subtract from the revenues of the entire system; and I am convinced that if such a situation ever comes about whereby they are forced to retire from that competitive traffic they will be placed in a position where they will have to recoup somewhere, and the only place where they can recoup will be in the local or intermediate rates; and if they increase those it will be a detriment to the entire country; and that will apply throughout the whole United States. I think it would absolutely disorganize all rates built upon the mileage system.

I think there was also some discussion last Monday upon the conditions which caused the Shreveport case. The Shreveport is generally known throughout the country, so I will not describe it in detail. But I have been very actively and intimately connected with the Shreveport case for the last three or four years, and I can say emphatically that there was never a complaint of discrimination in the Shreveport case by reason of long-and-short-haul violations. In fact, Shreveport is better situated than any city in the Southwest, with the possible exception of New Orleans; that is, it has more advantages, due to long-and-short-haul violations, than any city I know of. Shreveport, in fact, has been built up by long-and-short-haul violations. The traffic has been moved through Houston, Houston taking higher rates than New Orleans does; it has been moved through Dallas, Dallas taking higher rates than Shreveport does. Shreveport has been favored by these long-and-short-haul violations. However, the Texas people have never made a complaint against that, because they recognize their right to it.

Of course, there are a great many long-and-short-haul departures in Texas which are made to meet water rates. The way in which traffic into Texas was originally handled was by the water routes; that is, it was handled from New York or New Orleans by boat lines, and then transported by streams or ox wagons to the interior of the State. With the development of railroads—the railroads were originally built from the coast up toward the interior of the State—they all had rates to the coast which had been fixed by the boat lines. As those railroads gradually built northward, they were gradually built as far as St. Louis and other large distributing centers. Naturally, those railroads wanted to secure a great deal of business. They could not subsist on the local tonnage entirely. But in order to get into the business they had to make rates from St. Louis to Texas, which were in relation to the rates from New York to Texas by the water routes, and that arrangement has benefited the entire country in general. We have rates from St. Louis to the southern coast of Texas—Beaumont, Orange, Houston, and Galveston, cities which are in the so-called Houston and Galveston group—which are lower than the rail rates from St. Louis to Fort Worth. The rate on iron pipe from St. Louis to Houston is 27 cents, while the rate from St. Louis to Dallas is 46 cents. That rate has been made so that the north-and-south lines can meet competition from Pittsburgh by Gulf steamship lines. It gives the interior manufacturers a chance to compete with the Pittsburgh manufacturers, and it gives the north-and-south

railroad lines an opportunity to procure tonnage at something above the out-of-pocket cost in competition with the boat lines by the Gulf routes.

There has been a great deal of discussion upon the policy of allowing the railroads to so make rates as to secure this tonnage from the boat lines. It seems to have been the opinion that they are hauling it below cost in order to put the boat lines out of business.

But, as Mr. Barlow said just before he got off the stand, we now have a clause which is a part of the fourth section of the act which prohibits the railroads from increasing their rates after they have reduced them to meet water competition, except upon some showing of cause other than the elimination of this water competition. That, to my mind, serves as a check upon the railroads from reducing their rates below what would be a compensatory figure.

Nevertheless, and notwithstanding the relationship of rates from the interior to meet those of the Gulf routes, we find that the tonnage by the Gulf routes has grown within the last 30 years by leaps and bounds. We have two very dependable steamship lines between New York and Galveston. They absolutely control rates to that section of the country. They probably handle 90 per cent of the local business which is handled in Galveston, and 60 per cent of the local business handled in Houston, the north-and-south lines to St. Louis and those jobbing cities handling the balance. Those lines have not been put out of business by railroad competition, because they are efficient boat lines and give dependable service; they handle business on a minimum of time. I think the Morgan Line makes a time of five and a half days from New York to Galveston.

Mr. SANDERS. As a matter of fact, the Morgan Line is owned by the Southern Pacific, is it not?

Mr. LALLIER. Yes; it is owned by the Southern Pacific. The other line is the Mallory Line, which is an independent company.

Mr. SANDERS. But the Morgan Line is a part of the Southern Pacific system?

Mr. LALLIER. Yes; I understand so.

Mr. SANDERS. And they have been giving very good service, have they not?

Mr. LALLIER. They have been giving good service; and in the Morgan Line divorce proceeding the Interstate Commerce Commission found that it would be very bad policy to divorce the Morgan Line from the Southern Pacific.

The CHAIRMAN. Well, the Morgan Line is not a competing line with the Southern Pacific Line?

Mr. LALLIER. No; it is not a competing line with the Southern Pacific.

Mr. SANDERS. They are a feeder of the Southern Pacific; they bring the freight from New York to Galveston and distribute it from there over the Southern Pacific lines.

Mr. LALLIER. I have heard it said that the coastwise business through the port of Galveston has reached a higher degree of volume and efficiency than that of any other port in America, with the exception, of course, of New York; and all of our coastwise business originates or terminates in New York, or, at least, moves through there.

During the year 1914, out of 5,794,000 tons which moved through the port of Galveston, of all water traffic, almost half of it, or

2,072,420 tons, was coastwise business handled by the Morgan and Mallory Lines. I do not think that the meeting of these water rates by the rail rates has had any depressing effect upon the operations of the Morgan and Mallory Lines. On the other hand, it has served to benefit the entire State of Texas as a whole; we have better rates than we would have if we did not have the Morgan and the Mallory Line competing with the railroad lines, each operating as a check upon the other.

They handle enormous volumes of tonnage, which is distributed throughout the State of Texas. Tonnage moves from the East as far as Wichita Falls and Amarillo, which is handled by the Morgan Line. Of course, that competition is met by the north-and-south rail lines; and in meeting that competition they have reduced their through rates, which has a beneficial effect upon the entire system as a whole.

THE CHAIRMAN. Have you any internal water transportation in Texas—I mean river transportation, of course?

MR. LALLIER. To a very limited extent. We have inland water transportation between Houston and Galveston. That is largely cotton.

THE CHAIRMAN. I am speaking of real river competition with the railroads?

MR. LALLIER. Practically none.

MR. SANDERS. You also have a little water transportation at Beaumont and a little at Orange?

MR. LALLIER. Yes; that is practically the same situation as that at Houston.

MR. SANDERS. Yes; it is a very small amount.

MR. LALLIER. And it can not properly be considered inland navigation, because those cities are deep-water ports.

MR. SANDERS. Practically all of your river transportation in Texas is deep-water coast transportation, is it not?

MR. LALLIER. Practically all; yes, sir.

MR. SANDERS. Brownsville and Beaumont?

MR. LALLIER. I do not know of any at Brownsville.

MR. SANDERS. Do they not have any deep-water coast transportation at Brownsville?

MR. LALLIER. I do not think so.

MR. SANDERS. I know they used to have it.

MR. LALLIER. They may have small luggers, or what we term "mosquito fleets," down on the Gulf coast that navigate those waterways.

MR. SANDERS. But you have no inland waterways in Texas such as we have in Louisiana?

MR. LALLIER. Not to the extent that you have in Louisiana—of course not—we have not anything like the Mississippi River. We have some rivers in Texas which are navigable. I was in the office of the Board of Engineers, in charge of the improvement of rivers and harbors, which is located here in the Colorado Building, a day or two ago, and I was interested in a map that I saw on the wall. I noticed that the Trinity River was marked there as being navigable all the way up to Dallas.

THE CHAIRMAN. If you had heard some of the arguments made by some of your Representatives in Congress as to the necessity of

appropriating money for improving the rivers in Texas so as to provide water transportation to meet the rates of the Houston & Texas Central Railroad, you would have thought there were a good many navigable inland waterways there. And I remember I afterwards saw a photograph of a boat which did come down from Dallas, somehow or other, with 50 bales of cotton on it.

Mr. LALLIER. Yes, sir; that was frequently done in the past. As I said before, practically all the original commerce of Texas was borne by the shallow-draft boats or by ox wagons.

Mr. SANDERS. They can still do that now and then?

Mr. LALLIER. Yes; they could do that during the time of high water.

This development of our railroads has been a wonderful benefit to the State of Texas. Of course, it has relegated to the background this miscellaneous commerce on the streams, and it has put the ox-wagon competition out of business, just the same as it has put out of business those small, insignificant streams.

The CHAIRMAN. I am glad to hear you have good railroad transportation in Texas, because the next time a Member of the House from Texas gets up and wants to improve the rivers in order to bring the railroad rates down I can tell him what you have said. [Laughter.]

Mr. LALLIER. Well, we have some very efficient north-and-south transportation, but we feel that the rates are abnormally high.

Mr. SANDERS. And east and west.

Mr. LALLIER. Not so much east and west as north and south; that is, not down in the coast country. We have only one east-and-west line which parallels the coast, and that is the St. Louis, Brownsville & Mexico.

Mr. SANDERS. Well, the Southern Pacific is practically an east-and-west route, is it not?

Mr. LALLIER. That is more in the interior of the State. Yes, it is an east-and-west route, but it does not parallel the coast, except in the eastern portion of the State.

By reason of those lower rates which have been established in the Gulf coast region in Texas in order to meet those rates by the water carriers, we, of course, have what is apparently a discrimination against the inland cities, such as Fort Worth and Dallas, but we maintain that it is not an undue discrimination; and, as I have stated, they have never made a complaint before the Interstate Commerce Commission or anywhere else that that adjustment discriminated against them.

On the other hand, you will find that the greatest development in Texas has been in the northern part of the State, where they pay the higher intermediate rates. Dallas is considered the largest city in the State, and Fort Worth is only 30 miles from Dallas, and is also a very large city. All the largest cities are in the northern part of Texas except San Antonio and Houston.

The CHAIRMAN. Well, is that not due to those cities being in a section which has better soil, and to other natural advantages?

Mr. LALLIER. That is one factor; and possibly another factor is that possibly they are not only willing to take a chance, as one of our friends expressed it, but they actually did take a chance.

The CHAIRMAN. In other words, the higher rail rates did not build those cities up?

Mr. LALLIER. Did not militate against them.

Mr. SANDERS. They were built up, not on account of the higher rail rates, but in spite of them; I think that is what the chairman wanted to bring out.

Mr. LALLIER. They were built up by reason of the fact that these north and south roads could get that additional revenue to swell the revenues of the entire system.

Mr. SANDERS. That may be true; but the higher rates were not the cause of the great development.

Mr. LALLIER. Oh, no; they grew up notwithstanding that.

Mr. SANDERS. Yes.

The CHAIRMAN. They would be willing to have those rates reduced, I suppose?

Mr. LALLIER. Naturally so. But I am very firmly convinced in my own mind that to deny the north and south lines the right to compete for this business along the coast would cause them a loss in revenue which they would have to make up by increasing their rates to Dallas and Fort Worth. I do not think there is any doubt about that; and the Dallas and Fort Worth jobbers would still be at just as great a disadvantage as they are now; the Dallas or Fort Worth jobber would not be any better off than he was before, because Houston and Galveston would still be getting their lower rates by the water routes.

Mr. SANDERS. If there was any proposal to drive the Morgan Line and the Mallory Line away from Galveston, you would not indorse it, would you?

Mr. LALLIER. No; I certainly would not indorse that.

Mr. SANDERS. You think the Morgan and Mallory Lines a good thing, do you?

Mr. LALLIER. Yes, sir.

Mr. SANDERS. They are a fine thing, not only for Galveston but for Texas, are they not?

Mr. LALLIER. Yes, sir.

Mr. SANDERS. And I agree with you on that.

Mr. LALLIER. I think that because they are able to meet these rates and handle the business.

Mr. SANDERS. I want to ask you one question about the Morgan Line, and if I am wrong I want to be corrected: The Morgan Line is controlled by the Southern Pacific, is it not?

Mr. LALLIER. So I understand.

Mr. SANDERS. Well, everybody knows that. Now, here is what I want to ask you: The Mallory Line is considered an independent line, is it not?

Mr. LALLIER. Yes, sir.

Mr. SANDERS. But, as a matter of fact—and this is nothing against that line, but I am bringing this out in connection with another point that I have in mind—the rates on the Morgan Line and those on the Mallory Line from New York to Galveston are identically the same, are they not?

Mr. LALLIER. Yes, sir.

Mr. SANDERS. That is my understanding, and there is no reason to believe the contrary; it is nothing to be ashamed of; those rates have

been mutually agreed upon by those lines, and there is no cutthroat competition in them?

Mr. LALLIER. It is just the same as all rates in the United States are mutually agreed upon.

Mr. SANDERS. But you understand that in the case of the Mallory and Morgan Lines they can each fix their own rates?

Mr. LALLIER. Yes; they can fix their own rates.

Mr. SANDERS. But, as a matter of fact, the Mallory Line and the Morgan Line have identically the same rates from New York to Galveston?

Mr. LALLIER. Yes; whenever one line reduces the rate to 25 cents the other does the same.

Mr. SANDERS. And whenever one raises the rate the other line does the same?

Mr. LALLIER. They do not usually raise the rates; and one line would not raise it unless they knew the other was going to do so.

Mr. SANDERS. Exactly.

Mr. LALLIER. I have known of cases where one line increased the rate by itself, but that was immediately followed by the same action by the other. It all comes back to the same thing; whether it is a water line or a rail line it must meet the competition if it does the business. And it is this check provided in that section of the law which prevents the carrier who reduces the rate to meet this competition from afterwards increasing it after the competing line has been put out of business which protects the shippers.

The CHAIRMAN. That applies only to railroads.

Mr. LALLIER. That applies to all carriers subject to the act.

The CHAIRMAN. Yes; all carriers subject to the act; but that means only railroads.

Mr. LALLIER. But if the Morgan Line would reduce such a rate and put the Mallory Line out of business, for example, I think the law would prevent it afterwards increasing its rates.

Mr. SANDERS. That is not a hard-and-fast rule, is it? Is there not an exception to that clause of the act? It says they can not afterwards raise the rate, except—

Mr. LALLIER (interposing). Except upon a showing of cause other than the elimination of the competing water line.

For instance, I will cite such a case. Possibly you will recall the recent agitation for an increase of 15 per cent on all rates. That was done jointly by all the rail lines and some of the water lines also. And they based their contention or request for that advance upon different conditions—higher cost of material, equipment, supplies, coal, etc. That would be one of the exceptions, and it would affect all carriers alike; if it would affect one, it would affect all of them.

The measure of the Morgan Line rates is controlled by the commission. And, under the law which created the Shipping Board, the rates of the Mallory Line are controlled by the Shipping Board and must be filed with the Shipping Board. However, they have not yet assumed any such active jurisdiction over rate making or rate jurisdiction as the Interstate Commerce Commission has.

The CHAIRMAN. What would you say as to the wisdom of amending the laws of the United States so that foreign vessels could participate in the coastwise trade? Would not that give you water competition that you can not get now?

Mr. LALLIER. I understand that the law has been amended so that they can participate in coastwise trade.

Mr. SANDERS. Yes; but just for the period of the war; that is purely temporary.

The CHAIRMAN. I tried to have that provision inserted in the law at the time of the Panama Canal act—that is, so that foreign vessels could take cargoes from the Atlantic coast through the Panama Canal to the Pacific coast, but I was voted down.

Mr. LALLIER. Well, if you will permit me to say so, we people of Galveston are interested in our rates; we are interested in any kind of rates that will move tonnage through Galveston, and it does not make any difference to us whether the Morgan Line or somebody else's line handles that tonnage so long as we get those rates and the benefits which arise from water transportation facilities.

Mr. SANDERS. Good service and cheap rates?

Mr. LALLIER. Good service and cheap rates. We do not necessarily depend upon low rates which apply by the rail routes, but I think if the rail routes want to meet some of that competition and get the business they should be allowed to do so.

If I may be permitted, I will cite another case. As the committee knows, the port of Galveston is the greatest cotton port in the world; it handles practically one-third of America's cotton, and it handles one-fourth of the world's entire output in normal times. I regret to say that that is not the case now.

Mr. SANDERS. Normally Galveston handles between five and six million bales a year?

Mr. LALLIER. Very rarely it is 6,000,000; generally it is 5,000,000. Galveston also handles a great deal of grain which moves from Missouri River territory and territory north and west of there through Galveston. Our exports for 1914 were around \$300,000,000. That was easily the second port in North America for exports. Our imports were less than \$50,000,000. That means that nearly all of our tonnage is outbound movement. Our tonnage moves from the north down to Galveston, and the railroads have to handle a corresponding movement of empty cars back North.

Mr. SANDERS. Well, your ships come into Galveston empty, too, do they not?

Mr. LALLIER. The ships come into Galveston empty or in ballast.

Mr. SANDERS. Yes; that is what I mean.

Mr. LALLIER. Now, the problem there is, since the railroads have to handle those cars empty northbound is there any reason in the world why they should not be provided with some tonnage for those cars, since they have to haul them anyhow? We have a great movement of those empty cars northbound. It is true that the State of Texas is a great State and produces a lot of tonnage which moves northbound and eastbound from Texas to various points in the United States, but that does not come anywhere near filling those northbound cars moving from Texas ports.

The CHAIRMAN. You will not allow any company in Texas unless it domesticates itself by taking out a charter under your State laws, will you?

Mr. LALLIER. We have a great many of them there.

The CHAIRMAN. And you have a control over interstate railroads that you would not otherwise have by reason of that provision?

Mr. LALLIER. We have not any control over the rates.

The CHAIRMAN. Well, railroads from one State into another cease to be interstate railroads when they get into your State under that provision.

Mr. LALLIER. But our State commission has not any control over even intrastate rates.

The CHAIRMAN. They make the companies take out citizenship papers in the State, so to speak.

Mr. LALLIER. Now, going back to the car movement in Texas. Naturally, those railroads want to get anything that they can out of handling those cars northbound; and they have made efforts to increase their import business so as to load the cars going back north.

Is there any reason why they should not make a rate on coffee or sugar from Galveston to Kansas City or St. Louis the same as the rate that applies from New York to St. Louis, so that they can encourage some of the business through Galveston northbound, while at the same time they will carry a higher rate to Oklahoma City, which is not hurt anyhow? St. Louis is going to get her rate, anyhow, from New York; she is going to get her import rate on sugar. So why could not the railroads encourage imports by allowing a lower rate on sugar that would be loaded on cars that otherwise would move back empty, anyhow? There certainly can not be any great additional out-of-pocket cost for handling that sugar back there.

That is our situation. And we think that to amend the law in the way proposed by this bill would absolutely deprive us of that northbound import traffic, because we are primarily an export point.

There is another point that I want to mention regarding Mr. Spence's testimony. There has been some mention made of the fact that the coastwise lines—meaning those operating from New York to San Francisco and other Pacific ports—had secured approximately 1,000,000 tons westbound that otherwise would have gone to the railroads. And it seemed to be the opinion of the committee, if I may be permitted to say so, that they should be allowed to handle that coastwise business through the Panama Canal, in order to justify the digging of the canal.

Our ports down on the Gulf coast are situated closer to the Panama Canal than any other port in the United States, and we certainly do not think the Panama Canal was built to handle interstate coastwise business alone. Certainly we do not expect to profit by any interstate coastwise business through the canal. We do not think that the interstate coastwise business handled through the Panama Canal would justify a single dollar that has ever been used to dig it.

The CHAIRMAN. Do you mean from coast to coast?

Mr. LALLIER. From coast to coast of the United States.

Mr. SANDERS. You are speaking now for Galveston?

Mr. LALLIER. I am speaking for Galveston.

Mr. SANDERS. That is not our idea in Louisiana.

Mr. LALLIER. That is from coast to coast of the United States. What is 1,000,000 tons of freight moved through the Panama Canal compared with the \$450,000,000 that has been spent to develop it?

Mr. SANDERS. That was just the beginning of the movement.

Mr. LALLIER. We think the advantages of the Panama Canal will come from foreign business—from Asia, the Philippines, and the islands of the Pacific Ocean, and from the west coast of South America, and from the different coasts of Mexico. That is where the value of the Panama Canal, as we look at it, will come in.

The CHAIRMAN. Why not include California, Oregon, and Washington as well as Mexico in that list?

Mr. LALLIER. Well, we think their tonnage can possibly better be given to the railroad lines.

The CHAIRMAN. You want the railroad lines to have that but not the Mexican tonnage?

Mr. LALLIER. I do not mean to say that the vessels operating through the Panama Canal from the Atlantic to the Pacific coast should be deprived of the chance of competing for that tonnage. I think they should compete for it; but if they can not haul freight from New York to San Francisco at the same rates that the railroads haul it for they ought not to try to compete for it. Did they not make their rates lower than the railroads applied to the Interstate Commerce Commission for in those fifteenth section applications? As I understood it, Mr. Spence testified yesterday that their rates were made 35 cents; none of his rates were lower than 40 cents. If we apply this rigid fourth section clause, we are merely making all the consumers on the Pacific coast pay higher charges, because those rates will be raised; and, furthermore, it is a significant fact that various steamship lines operating between those two coasts have been very active in fighting for this bill.

Mr. SANDERS. Have they been any more active than the transcontinental lines have been in fighting against it?

Mr. LALLIER. Certainly they have been as active. Now, here is a case: Why do they want this 40-cent rate between the Atlantic seaboard and California raised to 75 cents? Is it not very apparent that it is because then they can raise their steamship rates? During a good many years in the past the water competition between the Atlantic and the Pacific coasts was on ships that passed through the Straits of Magellan or around Cape Horn. That is what originally caused these 75-cent and 60-cent rates between the Atlantic coast and the Pacific coast. Those old sailing vessels, those clipper ships, required 4 months to make their trip from New York to San Francisco; and if they could compete with the railroad lines is it not fair to assume that a steamship line operating through the Panama Canal, requiring some 22 days for the trip, can compete with the railroad lines?

Mr. SANDERS. Did not the clipper ship go out of existence before the transcontinental lines came into operation?

Mr. LALLIER. No, sir.

Mr. SANDERS. When were the transcontinental railroad lines joined together?

Mr. LALLIER. If you recall one of the old investigations of the Interstate Commerce Commission into these transcontinental rates—I do not recall the name of the case or the volume of Interstate Commerce Commission Reports in which it is reported—but in the decision of the commission there is a good deal of discussion of this

active competition which existed between the transcontinental routes and the clipper ships.

Mr. SANDERS. Well, as a matter of fact, the transcontinental routes, if my memory serves me right, were joined up in 1866, or about that time.

Mr. LALLIER. The clipper ships have existed since that time; some of them are in existence now.

Mr. SANDERS. But do you not remember that a gentleman of the Gulf ports, whose name was Semmes, was practically eliminated from the clipper ship industry, in 1864, in an engagement between the *Kearsarge* and the *Alabama*—that was the end of the clipper ships?

Mr. LALLIER. I do not remember that far back—that was before my time.

Mr. SANDERS. I would advise you to read "Semmes Afloat." That would show you the end of the clipper ship. There was no American merchant marine after the war.

The CHAIRMAN. Well, did the long time that was occupied in sailing around the Cape limit the competition very materially?

Mr. LALLIER. Yes; I think it did, notwithstanding the fact that the railroads had reduced their rates below what, I think, is a reasonable rate. I think 75 cents is a very low rate from the Pacific to the Atlantic coast, provided all tonnage has got to move on that 75-cent rate; but, if you have your fixed expenses anyhow and your trains are moving from West to East and there is a great deal of business that is not moving on those trains, I think if two carloads of freight can be placed on those trains and handled from coast to coast, it is just that much above out-of-pocket cost; and the railroads are not going to attempt to decrease their rates merely for the pleasure of putting coastwise lines out of business when it is not going to benefit them, and they know that they can not come along later and raise their rates to a remunerative figure.

There is just one more point that I wish to touch upon, and that is the transportation on the Mississippi River. I will say, before starting, that I am not very familiar with transportation upon the Mississippi River; but I do agree with Mr. Sanders's statement that many years ago coal used to be floated from Pittsburgh down to New Orleans in barges. I have heard that many times. What did those barges carry back on their return trip? Is it not fair to assume that the reason that they could not continue to operate in competition with the railroads was because they had to haul those barges all the way back to Pittsburgh empty? Your water rates upon the Mississippi River last year were considerably lower than your rail rates. I had the tariffs of the Inland Navigation Co.—plying South from St. Louis to New Orleans; they also made stops at Memphis, and, I think, at Vicksburg, and Baton Rouge—and I made several comparisons of them. The rail rates had been reduced to meet what once was active water competition, but which to-day is potential competition. Potential competition, in the sense in which I regard it, does not mean competition which may come sometime in the future—it means competition which has once existed and may exist again in the future.

The CHAIRMAN. It is just about as dead as if it never had existed.

Mr. LALLIER. That barge transportation did not cease to exist because they could not handle the barges cheaply enough southbound;

it was because they could not handle them southbound and then carry them back empty when the railroads were carrying their cars back loaded.

Mr. SANDERS. As a matter of fact, could they not move the barges down the river loaded and haul them back to the headwaters of the river empty as cheaply as the railroad could move the cars?

Mr. LALLIER. I think they can.

Mr. SANDERS. The fact that there is no coal going north is no reason why they should not haul it south. You can haul the barges back empty cheaper than you can haul the coal down originally by the railroads.

Mr. LALLIER. Well, I think they should do it. I think the boats could haul as cheaply as the rail lines; but possibly that does not offer as large a profit as some other investment of their capital. The railroads operate on what they claim is a very narrow margin of profit; possibly the boat lines want 50 per cent.

Mr. SANDERS. Well, you have heard of a railroad owning its own coal mines, have you not?

Mr. LALLIER. Yes. But it has been my understanding that the great demand for coal at New Orleans is not for railroad coal, and therefore it is not controlled by the railroad lines, but it is for bunker coals. We have a great demand for coal at Galveston, but I do not know of a single railroad operating out of Galveston that is burning coal; they are all burning oil. Still, there is a great demand for bunker coal and for coal for household use.

(Thereupon, at 4.45 p. m., the committee adjourned until Friday, March 29, 1918, at 10.30 o'clock a. m.)

LONG-AND-SHORT HAUL ON RAILROADS.

FRIDAY, MARCH 29, 1918.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.
HOUSE OF REPRESENTATIVES,
Washington, D. C.

The committee this day met, Hon. Thetus W. Sims (chairman) presiding.

The CHAIRMAN. The committee will come to order. Mr. Mann, I believe you and Mr. Wettrick have the floor this morning.

STATEMENT OF MR. SETH MANN, ATTORNEY AND MANAGER OF THE TRAFFIC BUREAU OF THE SAN FRANCISCO CHAMBER OF COMMERCE.

Mr. MANN. If the chairman please, and the members of the committee, my name is Seth Mann, and I represent the San Francisco Chamber of Commerce, my title being attorney and manager of the traffic bureau of the San Francisco Chamber of Commerce, and also, by request, I represent the Portland Traffic & Transportation Association of Portland, Oreg., as our interests and attitude are the same.

Before I proceed I desire to invite the committee's attention to the history of water transportation between the Atlantic and the Pacific coasts, referred to here by Mr. Lallier in his testimony, but the citation not given at that time. The report to which he referred is found in the case of the Railroad Commission of Nevada *v.* Southern Pacific Co., reported in Twenty-first Interstate Commerce Commission Reports, at pages 345 to 352. The decision is by then Commissioner Franklin K. Lane, and contains a very full history of the water transportation between the coasts.

The CHAIRMAN. Do you want that incorporated as a part of your hearing?

Mr. MANN. I think it would be an excellent thing if it could be done.

The CHAIRMAN. Is it a long or cumbersome document?

Mr. MANN. No; I have only quoted certain portions of it.

The CHAIRMAN. I think it is highly important that it should be included in your hearing somewhere, as you have adverted to it. Suppose you arrange it and leave it with the stenographer before you leave, to be considered in connection with your statement and made a part of your statement?

Mr. MANN. Yes, sir. It is, of course, the statement of an impartial person.

The CHAIRMAN. I know; but you are introducing it in support of your statement.

(The matter referred to is here printed in full, as follows:

NO. 1665.—RAILROAD COMMISSION OF NEVADA V. SOUTHERN PACIFIC CO. ET AL.

[21 I. C. C., 345-352, extracts.]

THE TROUBLOUS SEA.

In 1869, when the Union Pacific and Central Pacific railroads were united at Promontory Point, Utah, there was no such thing as a transcontinental rate, excepting as it was made up of a combination of locals. In fact, at that time it was not expected, so Senator Stanford has testified before a Senate committee, that there would be any real competition between the transcontinental railroad lines and the ocean carriers. The original purpose of constructing the Central Pacific road, so far as its California promoters were concerned, was to carry eastward from the Pacific coast to the interior, and the rates made across the Sierra Nevada Mountains were made to meet and overcome the then existing competition of the mule team. It was not the primary purpose to extend this road across Nevada, but only to furnish a means of communication between the city of Sacramento and the rich mining towns along the ridge of the Sierra Nevadas and on their eastern slope. Confessedly it was the lure of the Government subsidy which induced the extension of this line to the eastward. The purpose of the Central Pacific was to act as the distributor of the ocean-borne freight which was brought into the Bay of San Francisco by sailing ships coming in around the Horn; and for some time following the class. This rate was scaled down, being lower from Pittsburgh, and still lower apparently made to induce the all-rail overland movement of traffic, which did not require especial or express service.

The first through rate published was an open rate of \$8 per 100 pounds, first class. This rate was scaled down, being lower from Pittsburgh, and still lower from Chicago and other points. When competition was begun with the clipper ships out of New York, class rates were reduced to a \$6 scale, and these were graded from the east westerly. Commodity rates were also at this time established in an effort to take from the ships important volumes of business. These open rates, however, were found to be unsuccessful in developing any considerable amount of transcontinental business, owing to the fact that whatever rates the railroads made were met by the boat lines. Accordingly in 1877 the Union Pacific and Central Pacific, which worked together in this matter, instituted what is known as the special contract system, under which they published two rate sheets, one known as the "white list" and the other as the "pink list." The white list contained the open or public rate; the pink list contained the contract rate. Contracts were made with individual shippers that if they would give to the railroad line all of their traffic for a year to the exclusion of ocean carriers they would have a rebate down to the figure fixed in the pink list.

The battle began in earnest at this time between the railroads and the ocean lines. Whatever competition there had been before was insignificant when compared with that which followed the year 1877. At that time the railroad interests evidently determined upon driving the ships from the sea, and they very proudly admit that they succeeded in this effort at least to the extent of nullifying or controlling the water competition. The jobbers of the Pacific coast were individually dealt with; their waybills by the water lines were furnished to the railroad, from which it estimated the volume of traffic and the amount of charges paid thereon by the shipper. Upon this basis a rate was made by adding to the ocean charge an additional allowance for the saving in insurance arising out of movement by rail, the saving in interest upon the value of the freight, and an additional amount for the comparative certainty of delivery and expedition. Different rates apparently were made to different shippers. This secret contract system, by which a rate was made to each individual, firm, or shipper, was a logical application of the principle that the carrier should charge what the traffic would bear. For several years this system was successfully pursued with increasing advantage to the railroads; but under the pressure of strong popular agitation, and owing to the fact that the shippers were in many cases found to have broken faith, the railroads determined upon again publishing but one rate. To arrive at this rate they adopted a policy of "harmonization," as it was termed; they averaged the rates upon

various commodities which had been charged to various shippers and made a new schedule of rates, from which they varied as emergency might require or expediency advise by the current method of rebating.

Thus far we have taken no account of the Panama route, which had been open and operated since the early days of the rush to the gold fields. This route was in the control of the Pacific Mail Steamship Co. In 1871, hardly two years after the opening of the transcontinental rail route, the Union Pacific and Central Pacific railroads entered into agreement to subsidize the Pacific Mail, buying its space at an agreed figure, and often running the steamships empty. This arrangement was continued until 1881, when the steamship line was turned over to an association known as the transcontinental association, which continued the arrangement until 1893, so that during this period the Panama route offered no serious competition to the rail lines. And to continue the history of this negligible factor in sea competition, it may at this time be said that the Pacific Mail Steamship Co. is now controlled, through stock ownership, by the Southern Pacific Co., and has been since the year 1900.

Throughout this period of competition between ocean and rail lines we find this interesting rate condition to have existed: Class rates to Pacific coast terminals increased with the distance and were higher from Atlantic seaboard points than from interior points; commodity rates, however, which were created to meet special conditions at the seaboard—the weapons fashioned for the destruction of the clipper ships—were lower at the ports than at the interior points. In the language of Mr. Luce, of the Southern Pacific, "commodity rates were scaled up from the seaboard in the first instance, but the class rates were scaled down from the seaboard. There was always a higher class rate from New York than from Chicago, but often a lower commodity rate from New York than from Chicago." In 1883 a new competitor entered the field—the Sunset-Gulf route, a water line from New York to New Orleans owned by and connecting with the Southern Pacific line from New Orleans to San Francisco. This new line was looked to by the carriers generally to "take care" of water competition, in the significant language of a Southern Pacific official. It entered upon the work with such heartiness that before long the Pacific Mail alone kept on its perfunctory way between Panama and the Pacific coast terminals. The clipper ship as a competitor had been destroyed, Pacific Mail had been subsidized, and the transcontinental lines were in control of ocean as well as land transportation.

It is the estimate of the Southern Pacific that of all the traffic moving from the Atlantic seaboard to California from 1885 up to 1891 the Sunset-Gulf route carried from 75 to 90 per cent, and of the balance practically all went by rail. The aggressive policy of the Southern Pacific Co. in instituting a water line of its own between the Gulf and the Atlantic drove its water competitors out of the field and took from the rail lines all but the most insignificant proportion of transcontinental traffic. Those were the fine free days when "all sorts of rates could be had and all sorts of tariffs could be found."

A MERCHANT'S LINE.

Live ocean competition being out of the way, and the railroads having come to an understanding as between each other, matters went smoothly until the San Francisco merchants in 1892, being roused to activity by a recent increase in the transcontinental rates, instituted a boat line of their own. This brought on another rate war in which the merchants lost heavily and rates were reduced by the rail lines to absurdly low figures. The lines east of Chicago and those west fell out over the division of the joint through rates, and for a time there were no joint through rates extending from points farther east than Chicago, and blanket rates were made by the western carriers from Chicago, Mississippi River, and Missouri River points. After the railroad lines had killed off the San Francisco merchants' steamship line, losing thereby several million dollars, they came to an agreement with their eastern connections as to a new basis of divisions and a new scheme of rate making.

Thus we come to the year 1896, at which time the blanket system at present obtaining was first authoritatively announced. This blanket extended from the Missouri River to the Atlantic seaboard. We hear very little of water competition for the next three or four years. In 1900, however, the American-Hawaiian Steamship Co. established its first steamer line through the Straits

of Magellan. In 1900 also, as we have already seen, control of the Pacific Mail was purchased by the Southern Pacific Co. Neither one of these facts seems to have disturbed transcontinental rail rates.

In 1906 another step forward was made in the matter of water competition by the opening of the Tehuantepec route. The American-Hawaiian Co., under an arrangement made with the Mexican Government and with the sugar planters in the Hawaiian Islands, instituted the most satisfactory service which up to that time had obtained between the Atlantic and Pacific seaboard by water. Eastbound tonnage was furnished by Hawaiian sugar, and westbound tonnage was gathered at the Atlantic seaboard.

In 1907 the volume of westbound business carried to Pacific coast terminals via this route was 112,395 tons; in 1908, 117,203 tons; in 1909, 204,000 tons; in 1910, 239,500 tons. The total volume of transcontinental tonnage was, two years ago, estimated by the carriers at 3,000,000 tons per annum, while the total water-borne traffic is about 10 per cent of this figure. Inasmuch as the traffic of the country increases at the rate of nearly 10 per cent per year it would appear that in nearly four years ocean competitors of the transcontinental rail lines have been enabled to secure a total tonnage of approximately the normal increase in westbound transcontinental freight for a single year. In giving this figure we are allowing to the American-Hawaiian line all the advantage of the accumulated business of the six years preceding 1906, in which it had in operation its steamship line through the Straits of Magellan. Considering that this carrier has reduced its time of movement between the Atlantic and Pacific to an average of a little more than 25 days and gives a service that never before has been equaled by an ocean line, the slight increase in its tonnage either evidences that all-rail rates are more attractive for the great volume of business or that the water rates are maintained at a figure so nearly approximating those extended by the rail lines as not to overcome the difference in the service.

THE OCEAN "NEUTRALIZED."

We have thus traced the history of this protracted struggle between the ocean and the land carriers that we might clearly appreciate the strategy of the railroads and its effect upon the ocean-born traffic. One water route after another has been rendered innocuous. To meet the competition of the railroads the tendency of the ocean carriers has been to shorten the time consumed in passing by water from coast to coast. The clipper ship has been forced to give way to the steamship, and the steamship has been compelled to transship by rail a portion of the distance. The routes by way of Cape Horn and the Straits of Magellan have been virtually abandoned. For nearly 40 years the Panama route has been under railroad control. When an attempt was made to reestablish this route as a vital competitor the railroads used their own ocean-and-rail line to eliminate it from the field. So that for several years there has been but one ocean line which apparently has no railroad connection, that of the American-Hawaiian Steamship Co.; and this line lives upon sufferance, its rates being made with the knowledge of the railroad company and with a more or less definite relation to the transcontinental rail rates. Within the past few months another water competitor has entered the field—the California-Atlantic Line—which has done an extensive business both eastbound and westbound for the short time that it has been in existence, but the prophecy made by the railroad witnesses is that it will not last long.

In the light of this history it is not to be gainsaid that the transcontinental lines must give consideration to sea competition. For 30 years and more their effort has been to "neutralize and control" such competition, in the phrase of Mr. Stubbs, vice president of the Southern Pacific system. While they have subsidized, bought, and controlled the water carriers, there has always been present to the mind of the traffic manager of the transcontinental railroad the existence of the ocean and the possibility of its use. Without a ship upon it the ocean has the power to restrain in some degree the upward tendency of rail rates. A railroad may not safely indulge its desire to impose all the traffic will bear between two ocean ports, and it may truly be said that the least poetical of railroad traffic managers never looks upon the ocean without a sense of awe.

The railroads, moreover, must soon meet with a competition by water more intense than any that they have heretofore suffered, for within three years another route, one more important, searching, and determinative in its effect upon railroad rates than any other, will be opened—a route all water by way of the

Panama Canal. The cutting of this canal will, in effect, bring the Straits of Magellan 3,500 miles to the northward, and with modern steamships it is estimated that San Francisco will by water be removed from New York but 14 days.

Mr. MANN. Now, then, pursuant to the permission of the chairman and the committee, I will introduce as a part of my statement a portion of my statement made before the Joint Committee on Interstate Commerce, which met in San Francisco, at which the chairman was present. I have crossed out such portions of it as referred to other matters and will leave in such as have reference only to the long and short haul clause.

The CHAIRMAN. That will be very material.

(The matter referred to is here printed in full as follows:)

STATEMENT OF MR. SETH MANN.

Mr. MANN. If it please the chairman and members of the committee, my name is Seth Mann, and I am attorney and manager of the traffic bureau of the San Francisco Chamber of Commerce. I have been engaged in this traffic work, and to some extent in the matter before the commission, involving the administration of the long-and-short-haul clause, for some twelve or more years.

The first matter that I think I should touch upon in connection with this long-and-short-haul clause controversy is this, that we consider that this matter is not primarily a matter for us to defend or to support, but that it is primarily a matter for the carriers themselves to sustain and support. We have no right whatever, legally or otherwise, to enforce before any court or any tribunal, any alleged right or title to terminal rates that shall be lower to the coast cities than to the intermediate points, and we never have claimed that. A loose use of the word "entitled" has sometimes been made in connection with the rates to the terminal points, and is used to indicate and to connote the advantages which attach to the coast cities by nature, and from the fact that they are situated upon the unmonopolizable highways of the sea. So that we frequently say, in this matter our appeal is to the sea, because we have no appeal to any other place, tribunal, or court.

When the question of lower rates to a competitive point is up it is a matter for action on the part of the carrier. That is the method of all statutes of that character. The statute of our State here in California authorizes the carriers to make application to our State commission for relief from the long-and-short-haul clause of this State, and this commission of the State of California has granted this relief in a number of instances and denied it in a number of others.

A simple illustration of the relief from the absolute or rigid long-and-short-haul provision is the rate between San Francisco and Los Angeles. Heretofore regular lines of steamers were constantly plying the seas daily between San Francisco and Los Angeles, carrying freight and passengers. Accordingly, while the first-class rate from San Francisco to Los Angeles is 60 cents, the first-class rate from San Francisco to an intermediate point rises above 60 cents to 82 cents, I believe—some points below Bakersfield—and so it continues to this high point, and then the rates proceed to diminish down toward Los Angeles until the 60-cent rate is met, for the reason

that goods may move by the sea from San Francisco to Los Angeles at a rate which justifies the 60-cent rate, and then may be brought back north to points north of Los Angeles toward San Francisco, and that combination of movement and rates brings about the situation that the rates after reaching the high point go down to the ultimate competitive point, Los Angeles. So we have rates dropping from 80 cents to 82 cents down to 60 cents, as we go farther south and as the haul gets longer.

Now, we in the coast cities have endeavored to support this situation on the ground that the carriers have a right to make these lower rates to the competitive points if they see fit to do so on the ground that it is of greater advantage to the carriers and to the intermediate points to make this rate to the coast a lower rate than to the intermediate points, and that in our enjoyment of those rates, while to our benefit and advantage, it is not our absolute or legal right, but that the carriers are entitled to that relief because of the competitive conditions, and that in that sense we may enjoy those lower rates without the charge of enjoying an undue or unjust preference or discrimination. It is a discrimination to make a lower charge to a farther distant point, even if it be upon the ocean, than to an intermediate point. Discrimination exists because there is a difference in the rate, the rate to the longer distant point being lower than the rate to the shorter distant point; but it is not, according to the holdings of the court and Interstate Commerce Commission, an undue or unjust discrimination, and therefore in the general sense it is not an illegal discrimination. It is a lawful discrimination, and therefore we in the coast cities, I think, should especially impress the fact that we have never in any of these cases, notwithstanding the various severe charges that are made against us from time to time, claimed that we were either entitled to lower rates to the coast as a matter of law, or that we were profiting by an illegal or unjust discrimination, when the law and the Interstate Commerce Commission gave relief from time to time to the carriers from the absolute demands of the fourth section, and permitted them under the law to make lower rates to the coast than to the interior. And it is in that attitude that we present ourselves, as we always have presented ourselves, to bodies investigating the subject of this long-and-short-haul clause both the Interstate Commerce Commission and the courts and before this committee.

Therefore, logically as it appeared to me, the matter of this investigation on this subject should properly have been met in the beginning by the carriers with their defense, but I am given to understand that they may be heard later upon this subject and that this meeting of this committee here in San Francisco is for the purpose of receiving the testimony of shippers on the coast, and accordingly with that introduction I will make some statements, such as we have frequently made heretofore, covering the situation as we understand it to exist.

As to the existence of water competition, it has been claimed by the intermediate points, particularly the intermountain cities of Spokane and Reno, that water competition is an excuse. We have heard that word used here in this testimony. They have also applied bitterer words than that at times and have called it bunk, an absurdity, and a fake. They have claimed that the existence of

water competition was of so small moment that there was no justification for its having any effect whatsoever upon the transcontinental rates, particularly as far as the terminal rates were concerned. In that regard they find themselves in opposition to and in disagreement with a line of decisions of the Interstate Commerce Commission handed down for the last 25 years.

The first case in which this matter arose was the case of the city of Spokane, and was entitled *The Merchants' Union of Spokane Falls v. The Northern Pacific Railroad Co.*, and it is reported in 4 I. C. C., at page 183. The complaint was filed April 2, 1889, and was decided May 28, 1892. The existence of water competition was directly challenged in that complaint. The commission examined the situation and held that water competition, even at that somewhat distant date of 1892 was a forceful competition and a compelling competition which justified the carriers in meeting that competition at the coast points by making rates such that some at least of the traffic would continue to move by rail instead of being transported entirely by water.

There has been some statement here to the effect that the Interstate Commerce Commission has been derelict in its duty and has taken an unconscionable time in the decision of these matters and has rendered only one decision—at least that seemed to me to be the result of the testimony of one of the witnesses—and that of June 30, last. I should like, in this connection, to suggest a few of the decisions with their dates of decision, which have been rendered by the Interstate Commerce Commission, and which decide this question of the existence of water competition and its materiality and force of determining rates which the carriers were justified in charging to the competitive points.

The first is that very early case of some 25 years ago, which I have just cited. Then we have the case of the City of Spokane, *v. the Northern Pacific Railway Co.*, decided June 7, 1910, and reported in 19 I. C. C., page 162. That covered certain recommended commodity rates. They were not ordered in by the commission, but they were recommended by the commission; and later certain action was taken pursuant to that decision, although not directly in accordance with the rates there fixed. Then we have the *Commercial Club of Salt Lake City v. the Atchison, Topeka & Santa Fe*, reported in 19 I. C. C., page 218, and decided June 7, 1910. An order was issued later in that case on June 11, 1911. That covered also certain recommended commodity rates to these intermediate points; and I may say that these recommended commodity rates—recommended by the commission—were rates lower than those in effect at that time to the intermountain points, and the decisions were followed later by schedules of lower commodity rates to these points, and while those rates were not accepted by the commission as just or reasonable, they were permitted to go into effect and reduced the rates to the intermountain points and to Salt Lake. Then we have the *Railroad Commission of Nevada v. the Southern Pacific Co.*, reported in 19 I. C. C., page 238, decided June 6, 1910. This case involved the class rates to Reno, Nev., and a scale of rates was fixed in that case, which is still in effect, the decision of the Interstate Commerce Commission, of course, being based on the reasonableness of the rates themselves. The rate established in that case, first class, from New York to Reno was \$3.50,

and the carriers graded that rate to San Francisco on the basis of \$3.70, first class, and those are the class rates to-day.

Then there was the Spokane case decided about the same time, and, I think, reported in the same volume of the Interstate Commerce Commission reports, which fixed class rates upon a similar basis, as I remember, to Spokane. Then we have the decision entitled *The Railroad Commission of Nevada v. the Southern Pacific Co.*, and the *Maricopa Commercial Club v. the Atchison, Topeka & Santa Fe*, reported in 21 I. C. C., page 329. That case was decided June 22, 1911. It was decided after the amendment to the fourth section, of June 18, 1910, and took into consideration and discussed the amendments to the fourth section of the act as they were made in 1910. That was the decision on what is known as Schedule B, or Order No. 124, which tied the intermountain rates to the coast rates on a percentage or proportion of the coast rates, whatever they might be from time to time, the order being substantially this, that the rates to Chicago to the intermountain points should not exceed 107 per cent of the rates contemporaneously charged to the coast, so that if the rate was \$1 to the coast the rate from Chicago to the higher intermediate points could not exceed \$1.07, and so on, on any other rates that applied to the coast, and also changing as the rates to the coast changed, and so, as I say, fixing a proportional arrangement as between the intermediate rates and the coast rates and tying those rates to the coast rates. That order also prescribed that the rate from the Buffalo-Pittsburg territory should not exceed 115 per cent of the contemporaneous coast rates, and that the rates from the New York territory should not exceed 125 per cent of the contemporaneous rates to the coast, whatever they happened to be. That is often referred to as the Schedule B decision, or the percentage decision, or the decision which resulted in Order No. 124.

The case for the north was the *City of Spokane v. the Northern Pacific, et al.*, and that was decided June 22, 1911, and is reported in 21 I. C. C., page 400, and established the same relation between the intermediate high points and the coast. Then came the *San Francisco and Portland* cases, decided by the Interstate Commerce Commission. This was Docket 1243, and is reported in 22 I. C. C., at page 366, and there the Interstate Commerce Commission—

Mr. THOM. What was the date of that?

Mr. MANN. The date of that decision was February 5, 1912. The subject matter of that decision was largely water competition, which exists between San Francisco and Portland, Oreg., and the carriers were permitted to charge lower rates between San Francisco and Portland and to charge higher rates to intermediate points for a less distance, on the ground of the existence of this water competition between the two cities.

In the *City of Spokane v. The Northern Pacific Railway Co.*, decided May 14, 1912, and reported in 23 I. C. C., at page 454, the Interstate Commerce Commission authorized the carriers to put into the city of Spokane and that territory, proposed commodity rates less than those existing at the time, I think, however, passing on those rates as the final rates which could be there established, and in the *Railroad Commission of Nevada v. The Southern Pacific Co.*, 23 I. C. C., 456, decided May 15, 1912, one day later, a similar decision

was made by the commission with respect to rates applying at the intermediate points of Nevada and Arizona.

It should be said there, perhaps, than some other time, that the decision of June 22, 1911, the schedule B decision—that is to say, the percentage decision—was at that time in course of appeal through the Commerce Court to the United States Supreme Court and the questions there involved were serious, involving the question of the constitutionality of the newly amended fourth section, and also involving many other things, the power and jurisdiction of the Interstate Commerce Commission to establish zones or blankets, etc., from which rates should apply, as the railroads had theretofore done. That case was finally decided in the United States Supreme Court, I think, in June, 1914, and during this period of time which was elapsing from June, 1911, to June, 1914, over 10,000 applications on the part of the railroads all over the United States from North to South and from East to West were pending before the Interstate Commerce Commission, requesting relief from the fourth section and a right to charge a lower rate to the farther distance points than to the intermediate points. The applications of the Southern Pacific Co., for example, to make these rates via the Sunset & Gulf eastbound on asphaltum, beans, barley, canned goods, dried fruit, and wines, are numbered in the 10,000 and during this period of time the Interstate Commerce Commission was awaiting, and properly awaiting, the decision of the court of final resort, the ultimate authority in the United States, as to whether this statute or this amended fourth section was constitutional and as to what the powers of the commission were under that statute, and these applications awaited that decision. After that decision was handed down, the commission proceeded, in my opinion, with celerity and efficiency, to handle these numerous applications for relief from the fourth section from all over the United States, until now. I think they are fairly well on their way to finishing all that work.

But that delay of three years is not properly chargeable to the Interstate Commerce Commission, for they were awaiting the instruction and information from the Supreme Court of the United States as to what their powers were, if any at all. It was claimed in some sources, and from some sources, that they had no power whatsoever under the statute on the ground that it was unconstitutional and void.

In Fourth Section Application Docket 1243 (24 I. C. C., p. 34), decided June 6, 1912, the Interstate Commerce Commission on the application of the carriers reviewed their decision in the Portland case and affirmed it. Then came the Santa Rosa terminal case, which has been referred to in the testimony at this hearing (24 I. C. C., p. 46), decided June 4, 1912. That was the case when Santa Rosa said "If there are 92 terminal points in and around San Francisco Bay getting terminal rates, why should we not have them?" and the commission said "You may have them." That was the first Santa Rosa case, and out of that situation, which was a loaded one, although the Santa Rosa people did not know it, arose considerable litigation. The result was that under the order, as Santa Rosa had complained only against San Jose, Sacramento, Maryville, and Santa Clara, that the order ran to those four points and ordered the

carriers to remove the discrimination, which they promptly did, of course, by putting in higher rates to San Jose, Sacramento, Marysville, and Santa Clara. Whereupon there was great declamatory oratory, and suits were commenced by these 4 towns charging that they were discriminated against and a preference had been given the other 92 terminal points. The upshot of that situation was that the Interstate Commerce Commission held that the true terminal points were the ports of unloading, and established San Diego, San Pedro, San Francisco, Portland, Seattle, and Tacoma as the Pacific ports of unloading at which, only, such terminal rates could possibly apply.

There was another Santa Rosa terminal case reported in 29 I. C. C., page 65, decided January 5, 1914, and a third Santa Rosa case reported in 32 I. C. C., page 249, and decided December 29, 1914. In the meanwhile, on July 21, 1914, the Interstate Commerce Commission decided Fourth Section Applications 349, etc., reported in 31 I. C. C., page 511, which covered the rates on sugar eastbound to Chicago and there the commission authorized again a departure from the rigid rule of the fourth section in order that California beet sugar and Hawaiian sugar, which is produced in large quantities and refined in large quantities at San Francisco and elsewhere in California, might be marketed, presumably to the benefit of the consumers in Chicago in competition with the refined sugar coming from or through the ports of New Orleans and New York. The basis of that decision, as I understand it, is what is known as market competition, which is one of the exceptional cases under the head of the words "exceptional cases," in section 4 of the act, together with other competitive conditions, not only those on the water but those on the land, where the longer line must meet the rate of the shorter line, both of them being railroads.

Then there is another jurisdiction of the Interstate Commerce Commission under the fourth section, in exceptional cases, and that is under the provisions of the statute that through rates may not exceed the sum of the locals, and, subject to the jurisdiction of the commission, relief may be granted from that provision of the statute, I understand. The objection of Mr. Gardner, I think it was, that the rates from San Francisco to certain points in Nevada were less than the sum of the locals from San Francisco, we will say, to Reno and from Reno to Winnemucca, is not violative of that provision of the section. There is no objection—no inhibition—against the carriers charging less than the sum of the locals. The inhibition was against charging more than the sum of the locals.

Then we come to what are known as the schedule C cases. The first one I have here is entitled "Fourth Section Applications 205, etc. Commodity Rates to Pacific Coast Terminals and Intermediate Points, reported in 32 I. C. C., page 611, and decided January 29, 1915." These cases are referred to as schedule C cases, and I will take a few moments, with the permission of the committee, to endeavor briefly to outline what is meant by schedules A, B, and C, as I understand them.

Schedule A includes a number of commodities moved between some eastern defined territory and Pacific coast points which do not move by sea—do not conveniently move by sea, or do not ordinarily move by sea—and therefore it may be said substantially do not move by sea,

household furniture being a good illustration. That is a bulky commodity liable to be injured and costs a great deal to be packed and shipped by sea and does not move by sea ordinarily, and there are a number of items of that class, and in the course of this intermountain litigation, which has steadily caused, I may say, an advancement in the rates to the coast and a depression of the rates to the intermediate points, the carriers were called upon to take out of their terminal rate system those items which were readily not competitive items, and the arrangement ultimately arrived at was that the carriers made a list of those articles, and they have been carried in that tariff now for five years, at least I think, and as to those schedule A articles, a large number of them do not violate the fourth section and are not departures from the fourth section. The rates to the intermediate points are not higher than the rates to the coast. So, schedule A is to one side, out of the commodities moving from the eastern defined territory to the coast points.

Schedule B articles are the articles which move by sea, but which do not move by sea in such large quantities, or on which the competition of the sea is not so keen as those articles classified in schedule C. The first order of the commission in the schedule B cases, and which ultimately went to the Supreme Court, was decided on the basis of percentage, as I say—7, 15, and 25 per cent—and at that time, and after the decision of the United States Supreme Court, and when the carriers were engaged in endeavoring to comply with the order of the Interstate Commerce Commission in the so-called schedule B cases, or Order No. 124 cases, they appealed to the commission and asked for a hearing with respect to these commodities which were subject to the keenest kind of sea competition, in order that they might present to the commission the facts concerning those commodities, with a view to obtaining from the commission, if possible, some further relief from the fourth section than was awarded in the schedule B cases.

So, we have schedule A, which does not depart from the fourth section at all; schedule B, which is adjusted on the basis of 7, 15, and 25 per cent; and schedule C cases, in which the commission, after considering the testimony, authorized the carriers to have some further relief from the absolute provisions of the fourth section than had been granted in the schedule B cases, and here, upon carloads, they allowed them 15 cents higher to the intermediate points, from Chicago, to 25 cents higher, on the Buffalo-Pittsburgh territory, and 35 cents higher from New York territory.

Of course that differential in cents per 100 pounds now—it was formerly in percentages—still ties the intermediate rates—the rates at Reno, the coast rates—because whatever the coast rate is up or down that general maximum is applied. There were, of course, some further details of this matter concerning Missouri River rates and a method of conducting rates on the basis of Missouri River rates, which I will not burden my statement with at the present time, merely outlining the general scheme of the schedule C cases. That case was Fourth Section Application 205, etc.. Commodity Rates to Pacific Coast Terminals and to intermediate points, decided January 29, 1915, and reported in 32 I. C. C., page 611. There was a later decision in that same case, decided April 30, 1915, re-

ported in 34 I. C. C., page 13, and then we have the decision of June 5, 1916, entitled "In Application 205," etc., and the decision of June 30, 1917, also entitled "In Application 205," etc. Application 205, gentlemen, is the first application that was made on behalf of the railroads generally here—in a way a blanket application—and filed shortly after the amendment of the statute of June 18, 1910, which protected the carriers under the language of the statute itself, which required that they should file their applications within six months after the effective date of the statute, and they should be protected in those rates; that is to say, not penalized for charging them until the Interstate Commerce Commission had had an opportunity to decide upon those applications.

The decision of June 5, 1916, was made pursuant to the new action taken by the intermountain cities. The canal was opened about the 1st of August, 1914, contemporaneously with the commencement of the European war. It became immediately efficient to a high degree, as the findings of the commission in these cases will show, and it was closed by a slide in the canal on September 1, 1915. Thereupon, as the ships were not moving through the canal because of the slide, the intermountain points, seeing that this canal competition, this sea-borne competition, through the canal had ceased, petitioned the commission to reopen these intermountain cases—these Applications 205, etc.—and to adjudicate the question anew upon the basis of this interruption of sea competition between the two coasts. The commission then investigated that subject at great length, and I may say that in all of these actions that the commission has engaged in—hearings covering weeks and months in each instance, and receiving testimony covering thousands of pages in each of these cases, and cubic feet, if not cubic yards, with thousands and tens of thousands of figures showing the various details and the ultimate figures on each one of these investigations—during all this period of time, I may say, the competition of the water route between New York and San Francisco has been steadily increasing, starting in with the clipper ships around the Horn, followed by steamers around the Horn, and then by steamships conveying the freight across the Isthmus of Panama by railroad, and then through the American-Hawaiian system—conveying freight from the Atlantic to the Pacific over the Isthmus up to Tehuantepec, and it was a good service, indeed—and then, on the opening of the canal on August 1, 1914, the initiation of transportation by water through the canal, then the slide, and the petition of the intermountain points for relief because of the slide or the interruption of the water competition.

The commission again entered upon long hearings of this situation, and at the time of the final hearings and arguments in Washington, in April, 1916, the report of the commission, which had been sent down to examine the Panama Canal had just been filed in Washington, and they reported that the canal was a safe instrument of transportation and would continue so to be, and the canal was opened to traffic on April 15, 1916. But, pursuant to that investigation of the commission, they rendered the decision of June 5, 1916, in which they held that because of the diminution in the effect of water competition between New York and San Francisco, or the New York territory and the Pacific coast, perhaps I should say,

the former decision in the schedule C articles—by which the carriers had been granted this further relief from the fourth section—should be modified and abrogated, and that the carriers should be compelled to comply with the original order in the schedule B cases; or, in other words, adjust their transcontinental tariffs to the percentage system of 7, 15, and 25 per cent in connection with these common points.

The carriers proceeded to prepare tariffs which, in the language of the Interstate Commerce Commission, purported to comply with this order, but those tariffs did not meet with the approval of everybody, apparently. They were protested not only by the Pacific coast but by the intermountain points to some extent, and by merchants, manufacturers, and commercial interests of the whole United States as well, and a hearing was held in Washington in August, 1916, at which representatives from all over the United States were there complaining of this proposed adjustment by the railroads purporting to comply with this order of June 5, 1916.

In the meanwhile, pending this hearing, the carriers proposed to raise the rates to the coast points without raising the rates to the intermediate points by adding 10 cents per hundred pounds per carload, and 25 cents per hundred pounds to the less-than-carload rates; and those rates to the terminal points were advanced on December 30 of that year by 10 and 25 cents a hundred pounds without any advancement to the intermediate points. That resulted, of course, in a narrowing of the differential, or a difference, if you please, between the rates on any one commodity carried in those rates and the rates at the intermediate points. Those additions referred to schedule C commodities. But the commission, after having heard this situation, was confronted by a still further application on the part of the intermediate points to not only adjudicate the question of the disappearance of the ships on the basis of the schedule C commodities but also on the basis of the schedule B commodities; or, in other words, raising the whole question of the right of the carriers to make any lower rates to the coast than to the intermountain points. This new application was due to the fact that, notwithstanding the removal of the slide in the canal, the activities and exigencies of the European war had transferred the ships into the trans-Atlantic trade.

The amounts of freight offerings to the European ships were enormous. I was told in New York this spring that the fair average rate on a ton of freight moving from America to Europe was \$100 a ton, and yet we had rates through the Panama Canal of \$5 and \$6 per ton, and even before the canal was opened of \$9 per ton on the low-grade commodities of structural steel, etc. Under those circumstances it is not to be wondered at that the ships of available lines should be taken to the Atlantic Ocean and should go into that trade, and, in fact, they did so, and the American-Hawaiian Steamship Co., which has been in this business for many years, withdrew from the trade and chartered their ships in that trade, and the Luckenbach Co. did the same with their ships, and the other companies did the same. It was demonstrated at one of the hearings before the commission that there were 49 ships engaged in that business that disappeared, and the result has been that there has been no regular line in that transportation service since that time.

Of course, the people on the coast quite strenuously insisted that this is not a normal condition, and almost everyone seems to be willing to admit it. I say almost everyone. After the war is over we will expect the ships to return, and we will expect this great increase in United States shipping to find its way through the canal, as between the coasts, and in the meanwhile during the abnormal situation brought about by the European war we have endeavored to insist and urge before the commission that the whole transcontinental rate structure should not be thrown overboard and constructed anew when it can not be a matter, according to the opinion of the great mass or the majority of people, of more than two or three years until the situation will right itself and the conditions of competition return.

Commissioner Harlan, of the Interstate Commerce Commission, agrees with that. He writes a dissenting opinion, and a very able one, indeed, we think, to the decision of June 30, 1917, in which he deprecates the interference with this rate structure and commercial relationship on the coast and throughout the United States to a very large extent because of this abnormal and merely temporary condition. It is temporary surely; that is to say, it can not last forever. It is not normal, and it is not permanent.

But the majority of the commission did not agree with Commissioner Harlan, and they held that the water competition had been interrupted, and that accordingly there was no reason for a continuance of departures from the fourth section, and they so ordered, and that is the order of June 30, 1917. They have withdrawn all authority from the carriers to depart from, or violate, if you please—if you prefer that word—to depart from the rigid provisions of the fourth section and have denied them all right to charge any higher rate to a farther distant point than to an intermediate point on the same line in the same direction on the like kind of goods. That also applies on the eastbound rate, that rate which was permitted as a departure from the fourth section, whereby the carriers were allowed to carry these goods, such as asphaltum, beans, barley, canned goods, dried fruit, and wines, at 40 cents from San Francisco to New York, while charging higher rates from Fresno, for example. They were allowed to charge a higher rate from New Orleans to New York, but that departure from the fourth section has been removed. As far as the Pacific coast is concerned, Mr. Chairman, the rigid fourth section is in effect. The rates are not in effect; and as that has been the subject of more or less testimony here, I would like to endeavor to clear it up.

The amendment to the fifteenth section of the act to regulate commerce, signed by the President on August 9, 1917, and instantly becoming law, provides as follows:

Provided further. That until January first, nineteen hundred and twenty, no increased rate, fare, charge, or classification shall be filed except after approval thereof has been secured from the commission. Such approval may, in the discretion of the commission, be given without formal hearing, and in such case shall not affect any subsequent proceeding relative to such rate, fare, charge, or classification.

The decision was rendered June 30, 1917, and the effective date of the order was made by the commission October 15, 1917, by no means a time too long, when you consider that the carriers were not only obliged to amend these great transcontinental tariffs which are

volumes in themselves, but were also required to have them on file so that the commission and the public may have 30 days' notice before they become effective. Now, 30 days from October 15 leaves September 15, a month, and ordinarily in order to comply with this section the carriers require, instead of 30, 45 days, which takes it to September 1, and accordingly, they had but a very brief time to prepare these tariffs, and while in their preparation, I presume, came this law of Congress, and surely that should not be charged to the Interstate Commerce Commission as a part of the delay. The law says that they can not even file their tariffs without the previous approval of the commission.

Therefore, the carriers asked permission to file, obeying the law, and I understand about the 8th of September, and prior, of course, to October 15, they filed their application to file, and I am told that there are now on file with the Interstate Commerce Commission over 1,200 applications to file under this section, covering all sections of the country. I presume by this time—inasmuch as that information is a couple of weeks old—those applications number 2,000 or 1,500. The carriers pursued the rule enacted by Congress, and the Interstate Commerce Commission, seeing that under the new statute it would be absolutely impossible for the carriers to get those rates on file and give 30 days' notice of the rates, etc., by the 15th of October, suspended the effective date of the order until the further order of the commission. In other words, until it could have time to act upon these tariffs as filed. The tariff is filed. We have already received copies of the proposed tariffs, and we all concede—I mean the men who are devoting themselves more or less to the study of traffic conditions—we all agree that an immense transcontinental tariff, such as this is, amended and changed in so many particulars, in order to comply with the rigid rule of the fourth section, would hardly be permitted to go into effect unless the commission held some sort of a hearing.

There were immense protests when 15 per cent advances were proposed by the carriers, and it looked for a while as though we were not going to have any preliminary hearings on them; but the commission, of course, granted the hearing; and now, while it is not to be denied that the commission may accept tariffs for filing without a hearing under this amended fifteenth section, yet it was very clear, and almost absolutely positive, that the commission would be obliged to call a hearing when so many rates—thousands upon thousands of rates—were involved in this new tariff proposed by the carriers, pursuant to the order of the commission and in accordance with the new law of Congress, and the commission has proceeded by way of informal hearings, as authorized by the statute, and they commenced in New York, before Examiner Thurtell, on the 5th of this month. They will be continued on the 12th of November at Chicago, and will be continued on the 21st of November at Portland, Oreg.

I can not see how the commission—

The CHAIRMAN. Is that hearing being held by an examiner or by the commission itself?

Mr. MANN. By Attorney Examiner Thurtell, who has presided over all fourth section applications. He has written tentative opinions, and the opinion of June 30, 1917, is based upon the tentative

opinion which Mr. Thurtell himself wrote, although it is not the same. It has been very materially altered. Mr. Thurtell is conducting the hearing, and it seems to me there is no complaint on the part of the intermountain people against this selection. He was professor of mathematics at Nevada University and a member of the Nevada State commission at the time the first Reno cases were tried, and by reason of his ability was invited to the Interstate Commerce Commission, and he has been with them now for four or five or six years, and he is conducting this hearing.

I might add that my information is that numerous protests from various parts of the country were received by the commission against these proposed tariffs of the carriers, and possibly for that reason the commission has felt that it was necessary for them to give some hearings on these proposed tariffs, which were proposed by the carriers in response to the order of the commission under the law of Congress as it now stands. I think it would be much to be deprecated if tariffs of the extreme importance of these transcontinental tariffs, which are said to affect either directly or indirectly nearly every commercial and manufacturing interest in the United States, should be allowed to become effective without some opportunity being presented to the shippers and the commercial interests of being heard and of offering such objections as they may have to make against this, that, or the other rate. There will be thousands of rates in these tariffs.

The VICE CHAIRMAN. I suppose you heard the statement made by Senator Cummins and myself the other day, that when the conference committee was trying to agree on this amendment to the fifteenth section we were encouraged by two members of the commission stating that so much information had been accumulated by the commission that it will not take them long to decide on the reasonableness of any rate.

Mr. MANN. I should say that the commissioners were unduly optimistic under those circumstances. Of course, they have accumulated information that it would take a room to hold on this subject, but the peculiarity of this subject is, Mr. Adamson, that it hardly remains the same from day to day. The situation changes, certainly, from year to year, and in my opinion it never will be settled in the sense of being absolutely nailed down. I think this, for example, that the transportation rates will never be as low as they were two or three or four years ago; I think the rates by water will never be as low as they were upon the opening of the Panama Canal. The cost of operation, the cost of service, the cost of materials and supplies, the wages of the men that are to be employed will absolutely make it necessary that the transportation charges by water should be higher than they ever have been. One can not conduct a business of any kind at a loss for any great length of time. So, the rate schedules of all carriers, whether land or sea, will be on a higher basis in the future than they have been in the past.

The VICE CHAIRMAN. It has been our rule not to ask any questions until a witness has finished, but I suppose you have in mind some recent shipping legislation that will raise the cost of shipping by water.

Mr. MANN. Yes, sir; particularly the shipping bill. It has been regarded by myself and most of the men engaged in the shipping

business as a piece of legislation which has resulted only in advantage to the Japanese carriers; they are about the only ones left sailing between here and the Orient. A very large part, if not the greater part of the tonnage is being carried in Japanese bottoms, but that, of course, is by the way.

Now, as to the question of water competition being bunk, a fake and of no importance whatsoever with respect to making rates—

The VICE CHAIRMAN. You are wrong about suggesting that the talk about ships is by the way, because the jurisdiction of this joint subcommittee, under the powers conferred on it by joint resolution 60, is to investigate foreign as well as domestic transportation.

Mr. MANN. It covers shipping as well as interstate commerce?

The VICE CHAIRMAN. Yes, sir.

Mr. MANN. I do not want to drift so far afield as to get into China and Japan, however. I shall try to stay in the United States and California. However, I am willing to go as far as my transportation will take me, Mr. Adamson.

Speaking of the contention of the intermountain points, let me say, at the first, that we have no complaint against the intermountain points. San Francisco has no commercial jealousy to indulge against Reno. If Reno in the next two or three years, during which time the transcontinental rates shall be the same to Reno as to the coast and no more, but in some instances lower, because the carriers propose to grade some of those rates up, so that we will have to pay higher rates than Reno—if Reno during the next two or three years, during which they will have this new adjustment—shall become a great distributing center or shipping center we shall be glad to see that advance. We try, in the commercial bodies of San Francisco, as far as possible, to take a somewhat broader view than the confines of the State of California and the county of San Francisco, and the greater the development of this country, whatever it is, the better it will be for San Francisco. As Commissioner Lane said, in one of the transcontinental cases, these points, at least, will always be the entrepôt of foreign and ocean commerce.

Of course that has always been the case. But we have never had any material or substantial commercial conflict with the rates to Reno. Reno has been one of San Francisco's best customers, and I have heard the most kindly expressions from representatives of the Reno Chamber of Commerce, and I have, on many occasions, sat down and conversed in the most friendly way with them and have explained to them, as I am endeavoring to explain to the committee, what our real attitude is. The truth of the matter is that the commercial battle waged for all these years—25 or 30 years; ever since the railroads came here; since 1869; we will say 50 years, if you like—is a battle between the coast commercial centers and the Middle or Central West. It is the Chicago territory and the St. Louis territory and those great centers of manufacture and distribution, comprising, as they do, the greatest jobbing houses in the world, that we have been obliged to contend against in order to maintain our trade.

There is another circumstance which I must mention as it comes to my mind, and that is this, the advantage to the people of California and of Nevada and of Arizona and of Spokane territory

and of the Idaho territory from time to time of the great commercial so-called jobbing or wholesale houses which have been established on the Pacific coast. They are great emporiums of supply. They carry millions of dollars worth of goods which are brought from the East on terminal rates, and generally in carload lots, and they are able to supply the farmer or the dealer in the country town with his needs within a day or two, within such time as it takes his order to be transported upon the railroad, conveniently, therefore, in point of time, and furthermore, as a matter of business, even more conveniently, for these men without the assistance of these great emporiums would be obliged to deal with perhaps a hundred different people throughout the country and carry charge or credit accounts with 100 different men in various parts of the country, while here these emporiums assemble the goods in one warehouse and they carry one account. That is a business condition which we have heard urged most strenuously as of advantage to the country or the interior merchants or manufacturers or farmers or agriculturists, or whoever it is that deals with these people; so that while the jobber is sometimes hinted at or directly attacked as an unnecessary barnacle upon the ship of state, he, nevertheless, performs a large and important function in the convenient distribution of goods and the filling of the needs and necessities of life and civilization.

But this is not a jobbers' fight, as our friends from the intermountain points would have you understand, as far as this case is concerned.

We have no substantial or material jobbing contests with them at all. If it is a jobbers' contest anywhere at all, it is the jobbers of the intermountain points who are making the fight in order that they may become great jobbers. We hope they will. It does not make any difference to us if they do, but if the situation with respect to rates becomes such that Chicago and St. Louis and the great mercantile houses of the Central West shall be shipping into our customers in California and west of the mountains, if you please, west of the Sierras, and west of the Cascade Mountains, at a less rate than we can bring the goods from the points of origin and then distribute them in less than carload quantities, we will be forced to the very verge of the water without any opportunity to sell our goods outside of the confines of our own towns and perhaps 50 miles beyond. That is not the whole of the situation by any means. It is not a jobbers' contest at all, except so far as the interior is concerned.

We are very much interested in our manufacturers here on the coast, and we are able to point with considerable pride to the fact that our manufacturing industries have tremendously increased in the last 4, 5, or 10 years, or any period you may select. New sources of manufacturing enterprises are arising, and in almost any manufacturing enterprise conducted on the coast that can be pointed to it will be found that in two ways we are opposed or aligned against the commercial situation in the East, and that is this: In the first place, our raw material will be almost entirely brought from the East, as, for example, all the steel which enters into our shipbuilding, which has increased manifold, indeed, in the last two years, until our Union Iron Plant is the largest plant in the United States to-day, situated in Alameda at San Francisco. It is said that the basis of any manufacturing industry is coal and iron, and so, as the basis of everything.

whether machinery or anything else, we must bring our iron from the East, and then again where we sell our manufactured article here, near at hand, or far away, we must immediately meet the competition of the superior manufacturer in the East—that is, superior at the present time—and those rates which the law permits us to enjoy are of great importance to us, and have been the basis, or very largely the basis, of our 50 years' growth upon the Pacific coast.

Returning again to this alleged water competition as our intermountain friends would call it, I desire to read into the record, if I may, the statement of Judge Prouty, formerly a member of the Interstate Commerce Commission, in the City of Spokane *v.* Northern Pacific Railroad Co. case (15 I. C. C., 376, p. 383). That is a case decided prior to 1910, decided in February, 1909, in which Judge Prouty, in reviewing the situation, and in answer to the direct issue which had been presented in that case, namely, that there was no water competition in 1909, which justified any diminution in the terminal rates, said:

This commission has several times examined this claim of the defendants with respect to other intermediate points, has found that water competition did exist as now asserted by the defendants, and has held that this competition did in the main justify the system of transcontinental tariffs which these defendants have established. (*Kindell v. Atchison, Topeka & Santa Fe Ry. Co.*, 8 I. C. C. Rep., 608; *Shippers' Union of Phoenix v. Atchison, Topeka & Santa Fe Ry. Co.*, 9 ib., 250; *Business Men's League of St. Louis v. Atchison, Topeka & Santa Fe Ry. Co.*, 9 ib., 318.) It also reached substantially the same conclusion with respect to the city of Spokane in a former proceeding. (*Merchants' Union of Spokane v. Northern Pacific Ry. Co. et al.*, 5 I. C. C. Rep., 478.)

In that case Judge Prouty, referring to the disadvantages of the American-Hawaiian Steamship Co. under which they labored when operating via the Horn and through the Strait of Magellan, said, at page 385:

Nevertheless it always produced an effect, in fact a controlling effect, upon railway rates from the Atlantic to the Pacific coast.

And at page 386 the report says:

It can not be denied, in view of these uncontroverted facts, that water competition does exist and that it does produce a controlling effect upon rates to the Pacific coast from many eastern destinations. It is beyond doubt that this competition absolutely limits those rates from New York and points within a few hundred miles of New York to Pacific coast terminals.

Now in the case of the applications for relief under the fourth section Nos. 205, etc., City of Spokane *v.* Northern Pacific Railway Co. (21 I. C. C., p. 400)—that was the decision rendered on June 22, 1911—we have Judge Prouty again discussing this situation.

Mr. ESCH. The first was in 1909?

Mr. MANN. The first was in 1909, and now we have again Judge Prouty, in 1911.

He says:

The complainants insisted upon the original hearing, and have renewed the claim at every stage of this proceeding, that there is no active water competition; that the whole claim of water competition is put forward by the defendants as a pretense by which to justify the rank discrimination against interior points. The first inquiry is therefore whether water competition actually exists which has produced and does produce an effect upon rates from the Atlantic seaboard to the Pacific coast, from New York to San Francisco, treating these two cities as illustrative of the localities in which they stand.

This question of fact has been often considered in the past, and with but one unvarying result. The circuit court of the United States has twice found, once in a proceeding concerning these very rates to Spokane, that active water competition does exist, which controls the coast rate. (*Farmers' L. & T. Co. v. N. P. Ry. Co.*, 83 Fed. Rep., 249; *I. C. C. v. A. T. & S. F. Ry. Co.*, 50 Fed. Rep., 295).

This commission has repeatedly found and recognized the same fact (Citing a long list of cases and authorities.)

In the original hearing of the Spokane case we reexamined that whole question and reaffirmed our decision (*City of Spokane v. Northern Pacific Ry. Co.*, 15 I. C. C. Rep., 376.)

In the recent hearing upon the applications of transcontinental lines for leave to disregard the rule of the fourth section, evidence has again been produced upon this subject which conclusively shows that the previous finding of the commission is right. We had before us in the Spokane case the manifests of two ships from New York to San Francisco, and in the last hearing we had the manifests of two other ships. They showed in detail the articles transported, the point where they originated, the destination for which they were intended, and the rate under which they moved. These actual transactions prove more conclusively than any mere statement that almost every article which is the subject of ordinary commerce between the coasts can and does move from New York to San Francisco by water rates materially lower than those maintained by the defendants by rail. We have used San Francisco as the destination port upon the Pacific coast, and in some instances rates from New York to San Francisco are a trifle lower than to other coast cities, but generally speaking the San Francisco rate is maintained at Los Angeles, Portland, Seattle, Tacoma, and other points upon the coast.

Passing for the time being the extent and effect of this competition at interior points, it must be found as a fact that there is real and active water competition between New York and San Francisco, between the Atlantic and the Pacific coasts, which does limit the rate of transportation which can be charged by rail between those points upon nearly every article which moves by rail.

It is said that the amount of the movement by water is so insignificant that it should be disregarded. The amount is not so insignificant. If reference be had to the traffic which actually originates upon the Atlantic seaboard, a considerable percentage moves by water, but the significant thing is not the amount of the movement, but the ever-present possibility of that movement. As was said by the Supreme Court in the Alabama Midland case, speaking of the effect produced upon rail rates to Montgomery by the Alabama River:

" * * * When the rates to Montgomery were higher a few years ago than now, actual, active water-line competition by the river came in, and rates were reduced to the level of the lowest practicable paying water rates, and the volume of carriage by the river is now comparatively small; but the controlling power of that water line remains in full force and must ever remain in force as long as the river remains navigable to its present capacity."

So here the ocean is ever present. The possibility of using it as an avenue of transportation is ever open, and the fact that it will be used, or for any considerable length of time the defendants maintain rates which are so high or so adjusted as to render it profitable for shippers to resort to that means of transportation, is never doubtful.

That is the end of the quotation. Now, in the hearing in October, 1914—I forget the exact date, but anyway the hearing that preceded the decision of the commission in the first schedule C cases—the rail carriers presented testimony and exhibits showing the exact amount of the movement for the first three months after the canal opened on October 1, 1914, and on each particular commodity and upon all the commodities, and their showing was to the effect that, taking those three months as typical of the year, the amount of movement in the year would be 1,000,000 tons; and it is strange, perhaps, that the amount that actually moved was almost exactly that amount, according to the returns of the year, up to August 1, 1915; and of that 1,000,000 tons of freight the railroads showed just what they were

losing and showed just what their empty-car condition was; and they said this—

Mr. THOM. May I ask whether that was westbound?

Mr. MANN. Yes, sir; westbound; thank you. There was, I think, six hundred or seven hundred or eight hundred thousand tons—I do not just remember which—eastbound California products that went by the canal.

And the result was that the commission in the schedule C cases found, as they had continually found for 25 years, not only that there was water competition but that it had become extremely effective after the opening of the Panama Canal, and authorized the railroads in these particular cases, where these particular movements were concerned, to hold somewhat of the freight to their rails by making rates which would take the freight by rail, and this point was urged by the carriers, it has always seemed to me, with a great deal of force and effect and logical power, and that was this: Why should any intermediate point object to the rail carrier carrying some freight to the terminal if it was bound to go there by water anyway; if the rail carriers did not get it it would go by sea; then, why should the intermediate points object to the rail carriers making some little out of that competitive freight—not making much, but making something, and getting their fair share for the rails? I do not see but that that represents the whole situation of their transportation case. They can take it or leave it, but they can not get it to make anything out of it, no matter how little, unless they make rates in competition with their winter rates.

We coast cities do not want to take a stand that may seem too egotistic or too self-reliant, but we have great reliance upon San Francisco Bay and the Pacific Ocean here at San Francisco, and the other cities on the coast feel the same way. I know it will be the desire of Congress and our Government to increase the American merchant marine and increase shipping by water, but we feel quite confident that we will always have that means of transportation, fourth section or no fourth section, but we also feel this, that we need other means of transportation that we can have here upon the Pacific coast.

Of course, in these abnormal conditions there is congestion, but even when conditions are not abnormal these rail carriers are very busy and there have been car shortages prior to these present conditions, in 1907, for example. We are particularly dependent upon the rail carriers to help us in the distribution of our excess products on the Pacific.

California ships to the east and to Europe probably 100,000 carloads of California products in a year. I think that is not an overstatement. With the orange crop, the canned-goods crop, canned-salmon crop, our beans, our barley and lumber, we have an immense shipment going east to feed and supply the people of the United States with the necessities of life, and much of that goes forward to our allies in Europe at the present time. We, therefore, are interested not only in the westbound movement of traffic, but also in the east-bound movement of traffic, and we wish, therefore, that our carriers by land or by sea, if it comes to that, shall so develop in the future as to be as prosperous and as efficient as possible, and we therefore

seriously believe and urge in this matter that any fair and just arrangement which is not unduly or unjustly discriminatory should be permitted to the carriers if it will increase their efficiency and do no one else any harm.

So, then, we take the position that is our hope, notwithstanding the fact of our constant and confident reliance upon the sea, that the rail carriers, our other means of transportation, shall be allowed to pursue that financial policy or business policy which will make them most efficient and most prosperous without, of course, undue or unjust discrimination against any other community. In that regard we are also favorable to all means of transportation, including inland waterways. We would like to see the Mississippi River a means of water transportation which would give us water communication with Chicago, by reason of the Mississippi River and the Panama Canal. We want to see the rivers of our State and of our Pacific coast cities, and of all cities, improved and increased with respect to their transportation powers. We need them and we need their means of transportation.

I remember, in 1907, when we had the car shortage before, James J. Hill, of the Northern Pacific Railroad, stated that the trouble with the transportation systems of the United States was that we needed a great system of double tracking and that at least four or five billions of dollars should be expended in double tracking the transcontinental railroads. Gentlemen, until that is done, we shall not be in that high degree of efficiency that the transcontinental rail carriers should be in. The Southern Pacific is doing a great work in that regard and should be praised for it, not because they are an eleemosynary institution, but because they are wise enough to see the necessities of the situation, and in that regard I want to say what I perhaps omitted to say in the beginning, and that is this, that as far as the rail carriers are concerned, we are constantly opposed against them, and we maintain many cases against them, and frequently win those cases, but our position is one we hope of enlightened self interest. We think that is the position of the carriers, too. When these transcontinental carriers are attacked on the proposition of this adjustment, based on sea competition, we, seeing it is to our advantage from an enlightened selfishness, if you please, or from an enlightened self interest—that is better—that the continuance of this situation will be to the advantage of these roads themselves, not to mention here the advantage of the intermediate points as well—because if the carriers are not allowed to make these millions on the terminal rates they will have to be given millions from the intermediate rates, at least, so the Interstate Commerce Commission finds—and under all those considerations and all those circumstances, we feel we are not taking any selfish position; that we are not advocating or defending any preferential rates; that we are not seeking to retain something that does not belong to us or ought not to be granted to us, but we feel justified in taking the stand that our position is one to the advantage of everyone, and that an interference with it is simply to the disadvantage of everyone concerned, either directly or indirectly.

There are one or two matters that I would like to speak of before concluding, although I have taken more time than I expected to. I

wanted to bring out this fact, that during the progress of these hearings before the Interstate Commerce Commission the rates at the intermountain points have steadily decreased, so much so that it was demonstrated at one of the recent hearings before the commission, that by taking the rates fixed by the Interstate Commerce Commission—commodity rates—from eastern defined territory to Salt Lake City, and then projecting them to Reno upon the same proportional relationship which the class rates upon the same commodity, also fixed by the commission at Salt Lake bore to the class rate on the same commodity also fixed by the commission at Reno, the result would be that in substantially all the commodity rates now enjoyed by the city of Reno, very material advancement would have to be made.

The CHAIRMAN. Mr. Mann, you have given numerous cases in which the long-and-short-haul clause has been considered since 1910. What is the general result of all those cases thus far? Has there been any substantial tendency toward leveling of rates as between the coast and interior points?

Mr. MANN. Senator, may I ask, do you mean practically or as a matter of law for the future?

The CHAIRMAN. I mean practically.

Mr. MANN. Practically, the rates at the intermountain points are on a lower scale to-day than they were five or six years ago, and the practical differential or difference between the coast rates and the intermountain points is, at this moment, less than the difference was some years ago.

The CHAIRMAN. Now, with reference to the possibility of complete and perfect transportation through the Panama Canal, I understood you to say that the traffic through that canal during the first year of its operation mounted to 1,000,000 tons.

Mr. MANN. Yes, sir; westbound.

The CHAIRMAN. Westbound?

Mr. MANN. Westbound only.

The CHAIRMAN. How many tons eastbound?

Mr. MANN. I think 600,000. That is my memory.

The CHAIRMAN. Can you state at what average price per ton that transportation was moved?

Mr. MANN. No, sir; I can not, accurately, from my examination of the figures, state that, but I would like to refer you, Mr. Chairman, to page 617 of the so-called schedule C cases, decided January 29, 1915, and reported in 32 I. C. C., at page 611, where a table is given of some of these rates carried both by water and by rail.

The CHAIRMAN. Well, do you know whether the average cost was very much less than that of transportation by rail?

Mr. MANN. Yes, sir; the average rate by sea was very considerably less. I will say, than the average transportation rate by rail, and always was and always is. There is always a differential, Senator, between the sea rate and the land rate. Of course, I am speaking generally when I say always, and that differential is measured by the superiority of the rail service. There are a great many things in the water service which make it not so highly desirable as the rail service, such as in normal conditions the rapidity of the transportation, although upon the Panama Canal I have reason to believe that the

freight would move from New York to San Francisco in 25 or 26 days, and there were cases in which it moved at less than that, and the average rail movement takes about 20 days, so that differential as between the two services was very much narrower after the opening of the canal.

Then there is a liability of water damage in the case of rusting goods. There is marine insurance, the cost of dock and warehouse services, etc., and those conditions all permit the rail carriers to make a rate somewhat higher than the water rate and still make the rate effectively competitive.

The CHAIRMAN. Now, assuming that during that year there had been enough ships to carry all the traffic that was offered from the Atlantic coast to the Pacific coast—

Mr. MANN. What year was that, Senator?

The CHAIRMAN. That year of successful operation of the canal.

Mr. MANN. Oh, yes, sir.

The CHAIRMAN. Assuming that the transcontinental railroads had not the power to meet that competition by reducing the rates between coast points below the general level of the interior rates, what would the effect have been in your judgment—could you form an estimate of the tonnage that would have been carried from the Atlantic coast to the Pacific coast under those conditions through the canal?

Mr. MANN. I think it would be very much increased, sir, under normal conditions.

The CHAIRMAN. Can you give me any estimate of what it would have been?

Mr. MANN. I think, under the conditions which you mention, which I understand to be that the carriers are not allowed to make sea-competitive rates, and products may therefore go to the sea without what you call railroad competition—I think that the result would be that all heavy commodities would move by water, and that includes all structural iron and steel and, generally speaking, hardware articles of iron and cotton piece goods, which are what the wholesale dry goods people deal in and which are, by the way, produced mostly in New York and New England, in that neighborhood—that substantially all of the general articles of consumption which the Pacific coast uses would move by the water and that the railroads would be reduced substantially to an express service.

The CHAIRMAN. What effect would that have had upon the income of the carriers?

Mr. MANN. Of the railroads?

The CHAIRMAN. Yes.

Mr. MANN. The effect upon the income of the railroads would have been disastrous. The Interstate Commerce Commission has expressed that opinion in the Southeastern cases, reported in 30 I. C. C., in determining the question of whether or not it should allow the carriers between Chicago and New Orleans to charge less for the longer distance to New Orleans than to the other intermediate points, and they went into a classification there of the figures and came to the conclusion, and so expressed it in their findings, that if the carriers were not allowed to continue these departures from the fourth section they would lose a great deal of money. So, basing my opinion upon that, and also upon the fact that California was served for 20 years by water carriers only—that is, from 1849 to

1869—where we got everything from the East; we had to get everything from the East, we used in that period of 20 years—I say, with this highly organized water movement, with our fine steamships with their compartments of refrigeration, in which they can take fresh fruit and vegetables, if they desire to do so (Judge Prouty's statement back in 1909 is proven beyond peradventure of doubt to-day, namely, that the water carriers can carry and do on occasion carry every kind of commodity)—I think the rail carriers would be practically deprived of their coast tonnage, but as to what proportion that coast tonnage is, Senator, to the other tonnage of the country and how much their loss would be I must refer you to the carriers themselves, who have those figures, and I have no doubt would gladly furnish them.

But my understanding of the situation is that the movement of tonnage to the coast is not only equal to that of the movement of tonnage to the intermountain points but far exceeds it. Let me state that the witness here on the stand who stated that the tonnage to the coast was shown by the carriers to be only about one-third of the tonnage to the intermediate towns not only slightly exaggerated the tonnage to the intermediate points but referred to an exhibit put in by the carriers at the instance of Mr. Thurtell, in which the carriers show the respective movements of tonnage to California and to western Oregon and Washington, as compared to the movement to eight other States, and eastern Oregon and eastern Washington; in other words, they took in Missouri—most of Missouri—Colorado, New Mexico, and Nebraska. They ran a line down the middle of the United States. Of course, that is a very large territory, indeed, and undoubtedly they would continue to serve that territory even if they were denied the privilege of meeting rates at the coast, because there is no water competition in there, and those States must depend on the railroads for their transportation service; but when you take the coast you will find the coast tonnage is so large, no matter what its percentage may be, that the deprivation of the money that they would make out of that tonnage is so great that the carriers would be in a position where they were not making what they are entitled to.

The CHAIRMAN. How would the carriers meet that condition?

Mr. MANN. How would they meet that condition?

The CHAIRMAN. Yes.

Mr. MANN. They would certainly, in my opinion, come to the Interstate Commerce Commission or to such other body as Congress may constitute and show them the facts and figures and say to them, "Now, we must have our constitutional rights given us; we must have a fair income on the property which is used for the public use, and in order to obtain the income it is necessary to make higher rates to the country left to us."

AFTER RECESS.

The hearing was resumed at 2.30 o'clock p. m., pursuant to the taking of noon recess.

STATEMENT OF MR. SETH MANN—Resumed.

The CHAIRMAN. You were saying that if the transcontinental railways should conclude not to meet the competition of the waterways, by fixing lower rates for transcontinental transportation, that the

effect would be a large reduction in the revenue, and that that would be necessarily followed by an increase of rates to the intermountain region, in order to enable these transcontinental railways to get enough revenue to pay their operating expenses and taxes, and a fair return upon their investment. Do you not think that if the railways were practically to surrender to the waterways this transportation which the latter it seems can conduct much more cheaply than they, they would be compensated by the local rates from the ports to the interior, because the most of that traffic—all of it, indeed, except that portion consumed at the ports themselves—would have to be subject to railway transportation in some degree in order to reach the place where it is to be consumed? What is your view about that?

Mr. MANN. To some extent the increase in the locals eastbound might compensate the carriers, but it would be to a very small extent, because the carriers enjoy that same amount of back haul, distributive haul back from the coast, now, and it would not be increased; that is to say, if there are 10,000,000 tons of freight moving westbound to the coast cities now, it is either consumed in the coast cities, or consumed in their distributive territory in less-than-carload lots, distributed to the consumer. Whether that 10,000,000 tons should go by rail or water would not affect that distribution.

The CHAIRMAN. Do you not think there is a time approaching when the railroad facilities of the country will be so inadequate to meet the requirements of the country for transportation that it will be absolutely necessary to use to the full the waterways facilities?

Mr. MANN. Senator, of course, we can only express our opinions in that regard. I have tried to cover that in my statement by saying that we here on the coast desire to see the utmost efficiency produced in the case of all carriers, whether by land or by sea. If, however, the condition that you suggest comes about and the tonnage is so great as to require the services of transportation such as would require the operation of the equipment of both land and sea, taken at any given time, the result is bound to be that the increase of water carriage—that is, ships—will be greater than the increase in the capacity of rail carriers, because the sea is free, while it takes a billion dollars to construct a railway from Chicago to San Francisco.

The CHAIRMAN. At present, how is it with reference to products transferred from the ports of the Pacific to the interior—do those products come mainly from the east or are they the results of production here?

Mr. MANN. From the ports to the interior?

The CHAIRMAN. From the ports of the Pacific coast to the interior.

Mr. MANN. I have not the comparative figures. Of course, we have great imports from the Orient, which pass through these entrepôt, as Commissioner Lane called them, silks and various things from the Orient, which may be expected to increase, and then there are large shipments made from the ports and also from all other jobbing points in California to-day of the products of the soil and of the forests and the ocean, too, if we think of the canned salmon, and that situation of rates on those eastbound products very fairly indicates the difference that may properly exist between an eastbound and a westbound rate or rate structure. It was held very early in the work of the Interstate Commerce Commission that the

measure of a rate would not be necessarily the rate in the opposite direction; or, in other words, because a rate westbound is a certain figure between two points the rate eastbound need not be the same figure; it may be either a lesser or a greater rate, the only condition being it must be nondiscriminatory.

So, in the situation on the Pacific coast, we have an illustration of a schedule or system of rate making which has been the upgrowth of many years, which has adjusted itself to the needs of the people of the United States—not only those on the Pacific coast, but the people of the Middle West and the Buffalo-Pittsburgh, New York, and New England territories. It enables the producer in California not only to sell in all of the markets in the United States at the same figure that his neighbor pays—his neighbor in the State of California or wherever he may be—but it also enables the consumers of the United States to obtain those very necessary products at the same price that their neighbors obtain them, no matter how far removed those neighbors may be. In other words, it is a rate that is blanketed over the State of California and then over the United States. It is very nearly a postage-stamp rate.

The CHAIRMAN. I wish to ask a question in reference to that decision of June 30, 1917. You understand that that decision ignored the contention of the coast cities and was practically a triumph in every way for the intermountain region?

Mr. MANN. I think I might say absolutely.

The CHAIRMAN. It was a triumph for them?

Mr. MANN. It certainly was.

The CHAIRMAN. If that decision goes into effect, it will involve serious results to the coast cities, will it not?

Mr. MANN. Certainly.

The CHAIRMAN. Legislation such as the intermountain region demands would consist in striking out all exceptions to the rule?

Mr. MANN. We are under the absolute rigid fourth section to-day, as far as interstate commerce is concerned, and as soon as the rates go into effect there will be no departure from the fourth section; in other words, the absolute rigid fourth section will be in effect, and there will not be any need for a change in the statute. Those provisos in the fourth section, containing the exceptions, are, as far as the west coast, the Pacific coast, States are concerned, meaningless as far as any effect is concerned. But we should add that the tariffs involve rates as to which we should be left free and entitled to present to the commission changed conditions as soon as the ships return to the canal, and under those circumstances the rates on seaborne goods will be competitive rates which the carriers should be permitted to meet.

The CHAIRMAN. You contend for the present legislation upon the ground that it will enable the Interstate Commerce Commission to meet that future condition?

Mr. MANN. I contend that the present statute, as it now stands, is sufficient and should be allowed to remain.

The CHAIRMAN. And you contend that the advantage of it is that it will enable you to meet that new condition or enable the Interstate Commerce Commission to meet that new condition.

Mr. MANN. The Interstate Commerce Commission should be in a position to afford relief to the transcontinental carriers to meet that condition when it arises; and my argument is that when they are thus enabled to meet those new conditions when they arise it will be to the best interests of the whole people of the United States rather than to have an absolute long-and-short-haul provision—a rigid fourth section clause.

The CHAIRMAN. I understood you to say that the result of the action in 1910 by Congress has been to give already to the intermountain region a reduction of rates, and that their wishes will be fully accomplished if the decision of June 30, goes into effect?

Mr. MANN. Indirectly, I think, accomplished—that is, a depression of the rates at the intermountain points. I do not wish to be understood as saying that the passage of the amendment to the fourth section of June 18, 1910, instantly brought about or directly brought about the lowering of the rates at the intermediate or intermountain points, but the indirect effect of placing within the hands of the commission the adjudication of this transcontinental situation, which had been taken away from them by the Alabama-Midland case (168 U. S.), that that placing back into the hands of the commission of this power resulted indirectly in the reduction of those rates to the intermountain points; and then, after the decision of the United States Supreme Court came down in 1914, upholding the decision of the commission in the intermountain rate cases, that resulted in the reduction of the intermountain rates, and that, again, was by way of indirection, because it was the result of a decision of the commission, and not, you may say, directly the result of the statute, and between that time a number of voluntary adjustments have been made, all of which lowered rates westbound to the intermediate and intermountain points.

Now, then, as far as the second part of your question is concerned, as to whether the intermountain points will have received all of the relief they have ever claimed when this decision of June 30, 1917, is carried out through the proper processes of the Interstate Commerce Commission, I say, as I understand it, yes; absolutely everything that they have ever claimed will be granted, and there will be no departures to the fourth section, and the rates to the coast will not be any less than the rates to the intermountain points, and in some cases the coast rates will be higher.

As far as the eastbound situation is concerned, we have never heard of any complaints from the intermountain points in that regard. They have never filed any complaints; in fact, there is nothing to complain about, because there is no departure from the fourth section except in the case of rates via the Gulf, which, under a recent decision, were permitted to be put in from the Pacific coast ports to the Atlantic coast ports at less rates than to the intermediate points, and in that case, although there was no complaint from the intermountain points, because they were not affected by those rates, nevertheless the commission took jurisdiction of those rates and ordered compliance with the fourth section, for the same reason and on the same grounds as they are ordering compliance in the westbound rates, namely, because of the interruption of shipments through the canal.

Mr. SIMS. Mr. Mann, if I understood you correctly, in giving a history of this matter you stated that the Interstate Commerce Com-

mission had filed before it about 10,000 applications. Did you mean applications covering about 10,000 rates?

Mr. MANN. No, sir; probably covering about 1,000,000 rates—10,000 separate applications.

Mr. SIMS. Ten thousand separate applications filed before the commission?

Mr. MANN. Yes, sir.

Mr. SIMS. Filed by the railroads asking that the rates they then had in existence, which would be interfered with by the fourth section, as amended, be changed so as to comply with the provisions of the fourth section; in other words, they complied with the order and made applications touching 10,000 rates—

Mr. MANN. Ten thousand adjustments.

Mr. SIMS. My recollection is that you stated that the fourth section was attacked by a suit in court by the railroad companies, contending that it was not constitutional and void.

Mr. MANN. Yes, sir.

Mr. SIMS. And that during the pendency of that suit the Interstate Commerce Commission ceased to investigate or abated their investigation of these 10,000 proposed adjustments until that suit was decided. Is my recollection correct about that?

Mr. MANN. I think I stated that. If I did not, it is true.

Mr. SIMS. When that suit was brought, was the commission enjoined from action in that matter; was there a restraining order issued preventing the commission from considering applications?

Mr. MANN. Not from considering these other applications.

Mr. SIMS. I mean the 10,000 applications.

Mr. MANN. No, sir.

Mr. SIMS. There was no restraining order?

Mr. MANN. No, sir.

Mr. SIMS. Well, why did the commission cease to consider those applications during those three years?

Mr. MANN. In the first place, I would not undertake to say that they ceased consideration of all or any of them. I do not know, but that is my understanding. But, certainly the reason, and a very proper reason for them not to proceed to consider the 10,000 applications, was that it might be a useless waste of time, if the Supreme Court of the United States should decide that those provisions of the fourth section were illegal and unconstitutional, and that the commission had no jurisdiction at all to make any decision whatsoever in the long-and-short-haul cases.

Mr. SIMS. Is it not a fact that nearly all substantive legislation affecting the carriers is litigated as a rule; in other words, it is contested through the courts as to the power of the commission or the constitutionality of the act? Now, what struck me as strange was that an administrative body, directed by Congress to do a certain thing, should, of its own motion, without any restraining order from a court, cease to execute the order under the idea that possibly the act itself was unconstitutional. I did not know that the commission was clothed with judicial powers to determine the constitutionality of any act passed by Congress.

Mr. MANN. They do not. They assume that an act is constitutional.

Mr. SIMS. Then I do not understand their inactivity in this regard.

Mr. MANN. I made that statement based on a statement made to me by an attorney either for the Government or for the commission.

Mr. SIMS. Oh, I am not questioning the accuracy of your statement.

Mr. MANN. I do not want to make it as an absolute statement, because it was simply information to me, but I do want to say that I think it would be most wise indeed for any administrative body or anyone else to wait the decision of a number of cases, when the subject matter or the constitutionality of the act under which the body was to proceed was up for decision before the tribunal of last appeal in this country.

Mr. SIMS. This section of the statute provides that no greater rate shall be charged for a shorter than for a longer distance over the same line in the same direction. That was the normal legislative requirement.

Mr. MANN. I can not agree with you in that.

Mr. SIMS. That was the statute; then there were provisos added making exceptions, and any persons affected by it, in order to avail themselves of not being bound by that act, must show themselves as being within the exceptions; in other words, the thing they ask to do is the exception.

Mr. MANN. I can not agree that that is a normal condition. If you will read the statute as it was originally enacted—

Mr. SIMS. I am talking about the section as it now exists. It provides positively what shall and what shall not be done, but further provides that in exceptional cases the commission may authorize different action.

Mr. MANN. I understood you to use the phrase "it was a normal legislative condition."

Mr. SIMS. I mean the legislation was that they could not charge more for a short haul than for a longer haul over the same line in the same direction.

Mr. MANN. I differ from you in that. The original one said—

Mr. SIMS. I know; it said "under similar circumstances and conditions."

Mr. MANN. The original statute used the words "under similar circumstances and conditions" and provided that in exceptional cases, after a hearing before the Interstate Commerce Commission, the commission might permit exceptions in practically the same way as contained in the present amendment. So the normal legislative condition was the proviso authorizing exceptions from the long-and-short-haul clause.

Mr. SIMS. And the proper action, it seems to me, would be that the commission should make an investigation, and in all cases where it should not appear to the public interest, or for some good reason wherein they might decide that a change or an exception was not proper, they should provide that the carriers should not charge any more for a short haul than for a long haul. The statute reads plainly as to what they shall do, but makes an exception. The general law is now that they shall not charge more for the short haul than for the long haul where it is in the same direction over the same line.

Mr. MANN. I do not conceive it that way.

Mr. SIMS. I wanted to understand your view about the matter. Now, these 10,000 applications, being for exceptional cases, can only be authorized, to be continued in effect, by special action of the commission. The fact that the commission should undertake to treat the exceptions as the general rule instead of otherwise is something which I do not clearly understand.

Mr. MANN. I suppose this is a rule that is proved by the exceptions. The exceptions to the rule are so numerous as to constitute quite a bulwark to that position. I do not know how many there are, but I should undertake to say there are thousands of just such exceptions as that in the State of California permitted by the California commission, and yet we have substantially the same statute.

Mr. SIMS. Your contention is, as I understand it, that inasmuch as the interruption through the canal is temporary that there should be no readjustment of rates based on that temporary condition.

Mr. MANN. Yes, sir.

Mr. SIMS. And therefore you do not think that it was wise for the Interstate Commerce Commission to do what it ordered done by its order of June 30, 1917.

Mr. MANN. Yes, sir; I concur with Mr. Commissioner Harlan in his dissenting opinion.

Mr. SIMS. You agree with him?

Mr. MANN. Yes, sir.

Mr. SIMS. One of the reasons you had in mind, I suppose, is that if, while this traffic through the canal is temporarily interrupted, an adjustment of rates is established throughout the entire country, intermountain and intercoastal, that after business has adjusted itself to such a rate structure, then it will be about as difficult to change the attitude and change the rates when normal conditions have been restored as it has been to change the rates in this particular instance; in other words, may bring about a further disturbance. And do you coast people not also have an apprehension that if the rates are once changed they will always remain in that condition?

Mr. MANN. No, sir.

Mr. SIMS. That is, after the fourth section is put in full force and effect, after it has been in full force and effect two or three years, the Interstate Commerce Commission will be slow to change it and put it back where it was?

Mr. MANN. I have no reason to fear that. The commission itself invites the railroad companies, in their opinion, to come to them when that change is made. If you will permit me to say it, the commission said in that last opinion (46 I. C. C., p. 236), reading from page 276:

When, the water competition again becomes sufficiently controlling, in the judgment of the carriers, to necessitate a reduction of the rates to the coast cities to a lower level than can reasonably be applied at the intermediate points, the carriers may bring the matter to our attention for such relief as the circumstances may justify.

Mr. SIMS. They could have done that without that being stated there. They can make an application at any time to change the rates.

Mr. MANN. We might construe it a courteous invitation.

Mr. SIMS. But when the rates are established all over the intermountain country in accordance with the fourth section, without

any exceptions, and business adjusts itself to that condition and continues for four or five years, will it not be more difficult to go back to present conditions than if they had never left the present conditions, because being temporary now—

Mr. MANN. No; and I will tell you why. As soon as these new conditions we are talking about come about, the war having ceased, the port cities will immediately begin to bring in the goods by water on ships through the canal—all the supplies that they need—and there is nothing that is manufactured in our part of the country that can not be obtained from the manufacturers of the Atlantic coast, and it is the Atlantic coast primarily, of course, that will be interested in the shipping to the Pacific coast—accordingly, instantly that will take place—and it will instantly begin to move our goods by the efficient method of the sea, and by the low rates that will prevail by the sea. Under those circumstances, the situations we have described must happen one way or the other. If Congress in its wisdom concludes to retain this fourth section as it is, an appeal will be made to the Interstate Commerce Commission, and the Interstate Commerce Commission assures the transcontinental carriers that they will act with great promptness—

Mr. SIMS. No; that they will consider it. As you real it I did not understand that the commission made any statement that they would do any more than consider it.

Mr. MANN. Those are the words in the opinion; they will act as promptly as possible. The commission says:

It is not our purpose to put upon the carriers any undue hardship * * * will be disposed of with such celerity as the circumstances will permit.

Mr. SIMS. It does not say how they will dispose of it. If that opinion had said that this order was only to last during the absence of water competition through the canal and later automatically to be restored upon restoration of the water competition, I could see then that would be very effective. But anyway, your idea is this being a temporary matter that you should not adjust your rate structure practically to a temporary standpoint and then take the chances of getting back to what you think should be the situation.

Mr. MANN. And thus have two traffic revolutions.

Mr. SIMS. There have been several applications on the part of the railroads to increase rates on account of the present high prices of labor and material, which are due alone to the existence of the war, and as soon as the war is over we will naturally expect them to be greatly reduced. They asked for an increase of rates on account of a temporary condition. Would you think that the Interstate Commerce Commission, if it now gives an increase in rates due to the temporary war prices, should feel under the same obligation they seem to express themselves in that opinion, to reduce those same rates when the war ceases to affect the cost of labor and supplies?

Mr. MANN. You are asking for my attitude in the 15 per cent cases. I attended all those hearings—

Mr. SIMS. There is another application.

Mr. MANN. Yes; there is another application now pending on the part of the eastern carriers. The southeastern carriers and the southwestern carriers have not yet joined. I must make some qualification of my opinion in order to be understood. I am absolutely op-

posed to any horizontal or percentage increase in rates because it disturbs all rate relationships. The moment you take any parallel advance, I do not care whether it is an import tariff or taxes, or anything else, you increase the disadvantages. The further distant points must suffer. That is the objection to the 3 per cent tax on freight bills. Instead of making the tax per 100 pounds, no matter what the distance may be, where everybody would be taxed equally, it is made on a percentage basis and is applied in such way that when it is applied to the man with a short haul his taxation does not anywhere nearly compare with the man who has a long haul, and when you advance rates horizontally 15 per cent it works out the same way.

But, coming to the main proposition, as to whether or not the carriers should be entitled to an increase in their rates on the ground of an increase in the cost of materials and service which they are obliged to buy, I say there is no question but that, if they make that proof, they are entitled to a proper increase, preserving, of course, the relationship of the rates. Now, as to its temporary character, no one can tell; that is to say, we can not tell how long these conditions of high prices are going to continue. They may continue for a long time after the war, but that is not the case with respect to the Panama Canal and the operation of ships through it. It is absolutely certain that as soon as the war ends, or very shortly afterwards, the shipping through the canal will be resumed, and nobody denies that, as far as I know.

Mr. SIMS. My idea was, it was your opinion—and I am not controverting it—that to remove a temporary trouble that the remedy should be only temporary, and if you increase rates to cover a war condition that they should be, if possible, reduced to the peace level when the war ceases.

Now, if it is necessary for this adjustment of rates to exist in the intermountain territory now, when the canal is in full operation, to apply as a practical remedy a rule of action that depends entirely on a temporary condition, it strikes me as not logical, and it seems to me the result will be, if you once get your intermountain rates regulated to the fourth section, without applying any exceptions, and that if they once get a 15 per cent rate increase, that it will be a long time before you will be able to get the rates back to their former adjustment.

Mr. MANN. If that is the case, there will be a great many more ships moving through the canal, much to the delight of the coast cities.

Mr. SIMS. Suppose this exception were made only to freight coming through the canal to the coast ports, and then let the normal rate apply on goods shipped from the ports into the interior, what do you think of that? In other words, if the railroads are receiving compensation for services which they do not perform; that is, you send something from New York to Salt Lake City and they get paid for an 800-mile haul they do not perform—

Mr. MANN. I heard that spoken of by the man from Salt Lake City, but I do not think that is a fact.

Mr. SIMS. Now, then, if the freight instead of going to Salt Lake City by rail had gone through the canal and come around to San Francisco, and then the railroad takes it up and carries it from San

Francisco to Salt Lake City, the railroads would have performed the service and should be paid for it, and I naturally suppose that the rail rate would be added to the Panama Canal rate that the merchant pays. I can see no injustice in that, but I do think that it is unjust for the interior places to pay for a service of several hundred miles that the railroads do not perform.

Mr. MANN. That is a common belief, but it is wrong. Nearly everyone that approaches this subject approaches it with that erroneous idea. They say that if a railroad can carry 100 pounds of any freight from New York to San Francisco for a dollar, why can not it carry it for a dollar to a place several hundred miles inland? Then comes this talk of a back haul, as though the railroads carry the freight back from San Francisco to Reno or Fresno, and they say that when the railroads do not perform a service they have no right to receive a charge for the service which they do not perform, but, unfortunately for the man who advances that proposition, they do not do that. The back-haul charge, as it is called, is not a charge at all. It should not be called a back-haul charge.

Mr. SIMS. You mean there is no back hauling done?

Mr. MANN. No, sir; the railroads do not receive any back-haul charge. The fact of the matter is that the local from the port to the interior points is a part of the measure of competition by water which the carriers meet at that point. For example, suppose we take 100 pounds of freight, which moves here by water at a cost of \$1. It is landed at San Francisco, and you pay \$1 for getting it there by water, and then you ship it to Fresno, and you pay 50 cents to get it there, and your total freight, water and rail, is \$1.50. Now, the rate of the rail carrier to Fresno, for instance, is \$2, and the Interstate Commerce Commission has found that that is a fair and reasonable rate on the straight haul to Fresno. Very well. What is the competition by water that the carrier meets at San Francisco on the one hand and at Fresno on the other? At San Francisco it is \$1 and at Fresno it is \$1.50, and he must meet that competition by establishing rates which will take that traffic or let it go by water. And so it goes on. Your rate is nothing more than a measure of the competition the carrier meets, until you go back far enough to where the lower rate meets the reasonable rate coming from the other direction. Do I make myself clear?

Mr. SIMS. You have made yourself very clear all the way through, as far as that is concerned. When we get a man who can give us information, I have always thought that perhaps it is well to examine him with a view to bringing out all the information he has.

Mr. ESCH. When Judge Prouty decided, or wrote the opinion in 1909, he acknowledged existence of water competition, did he not, on the Pacific coast?

Mr. MANN. Yes, sir; and he found it to be a fact.

Mr. ESCH. He found it to be a fact?

Mr. MANN. Yes, sir.

Mr. ESCH. At that time the water competition you did get on the Pacific coast had to come around the Horn, or by rail across the Isthmus of Panama, or over the Tehuantepec route?

Mr. MANN. I do not think that route was perfected.

Mr. ESCH. That is what I wanted to know—whether in 1909 the Tehuantepec route was in operation.

Mr. MANN. I do not think so.

Mr. ESCH. Then, the American-Hawaiian Line was not using it?

Mr. MANN. No, sir; they were coming around the Horn by steamers.

Mr. ESCH. So, if that Tehuantepec route had been in existence in 1909, it would have greatly added to Commissioner Prouty's decision that there was water competition?

Mr. MANN. Yes, sir; because when the Tehuantepec route came in the amount of tonnage moving that way largely increased.

Mr. ESCH. I am not familiar with the fact, but the American-Hawaiian Line shipped from Honolulu to the Pacific coast terminals and then by way of the Tehuantepec route to Atlantic terminals?

Mr. MANN. That has been very generally the course according to my recollection; during the time of their steamer lines, at any rate. They had a contract and they are still carrying out part of their contract at a loss under present prices, in moving sugar from Honolulu to New York, and they came with a load from New York around the Horn to the Pacific Ocean and later over the Isthmus of Tehuantepec to the Pacific Ocean to Los Angeles and San Francisco, Portland and Seattle, and then they went across to Honolulu and loaded sugar, and then very often went straight to New York. They might have returned and have taken some cargo from the ports eastbound.

Mr. ESCH. Then, when he wrote his decision, in 1912, there was still greater force to his argument—

Mr. MANN. Yes, sir; because of the increased tonnage and increased number of ships, etc.

Mr. ESCH. And, of course, in 1912, he anticipated the speedy construction and operation of the Panama Canal?

Mr. MANN. Yes, sir.

Mr. ESCH. And it became operative in the fall of 1914.

Mr. MANN. Yes, sir; August 1, 1914.

Mr. ESCH. What did you say was the tonnage the first year through the canal?

Mr. MANN. One million tons, westbound.

Mr. ESCH. Westbound?

Mr. MANN. Yes, sir.

Mr. ESCH. The westbound is a little in excess of the eastbound?

Mr. MANN. Yes, sir.

Mr. ESCH. Of course, it is not a fair estimate now of the traffic through the canal, because it is largely used in connection with the traffic to the west coast of South America—

Mr. MANN. Our reports of activities of the Panama Canal are equal to or greater than any other year. The ships are going around the world through the canal. The canal is an extremely busy waterway.

Mr. ESCH. I understand it is estimated that 5,000,000 or 6,000,000 tons a year pass through the canal.

Mr. MANN. Yes, sir.

Mr. ESCH. So, when peace comes with the increased merchant marine there will be actual water competition between the Atlantic and Pacific ports?

Mr. MANN. Yes, sir; I can not see any other possibility. I can not see any way in which these ships can be used if they do not go

into the canal business. It seems to me that there will be many of them that must operate in that business.

Mr. ESCH. Your opinion is that if that goes through there must be an increase in the intermountain rates, as compared with the terminal rates?

Mr. MANN. That is probable unless the carriers are permitted to indulge or engage in the water competitive traffic, because while they will continue to bring freight to the coast under the proposed high rate, lifted to the level of the intermountain points, or higher, during the period of the absence of shipping through the canal, the cars of the railroad carriers will be empty as soon as the ships come back into this traffic unless the rail carriers are allowed to meet those rates.

Mr. ESCH. You stated that the class A rates were outside of any of the long and short haul protests—they did not involve any violations?

Mr. MANN. Yes, sir; in other words, they do not depart from the absolute rigid fourth-section rule.

Mr. ESCH. They can be ignored, as far as that rule is concerned?

Mr. MANN. Yes, sir.

Mr. ESCH. You say household goods is an illustration of the class A rates?

Mr. MANN. Yes, sir.

Mr. ESCH. Is crockery within the class A articles?

Mr. MANN. I do not know; but I referred in my statement to such articles as chairs, bedding, desks, etc. Furniture, I perhaps should have said instead of household goods. I would like to amend my statement to "furniture." It is schedule A instead of class A.

Mr. ESCH. What is there in that particular commodity that would justify the carriers in putting it into that schedule?

Mr. MANN. Because it does not move ordinarily by sea; it is too inconvenient. Of course, it can move by sea, and does occasionally.

Mr. ESCH. Why—because it is breakable?

Mr. MANN. Yes, sir; it is more liable to sea damage and involves great expense in packing it so as to avoid injury at sea through the tipping of the vessel, and it is more convenient to have it go by rail than to go through the trouble of packing it. The rates are often made with respect to weight or measurement, and of course a bulky article like furniture would take up more space than other closely packed commodities.

Senator CUMMINS. I desire to say, not merely in compliment to Mr. Mann, but as a reason for the examination that I shall pursue, that he has laid before us a statement which in its lucidity, in its breadth, and in its temper has not been excelled by any I have heard upon that subject.

Mr. MANN. I thank you, Senator.

Senator CUMMINS. And it is obvious that he has opened up a subject vastly more comprehensive than the relation between the railway rates applicable to Intermountain States and the Pacific coast. I feel sure that the questions I am about to propound are within our inquiry, however. You understand that we—I say "we"; I mean the committee and Congress—are dealing with a system of regulation and not with rates?

Mr. MANN. Yes, sir.

Senator CUMMINS. It is our mission to ascertain, if we can, in what respect the system we have is inefficient, and to suggest remedies for the inefficiency. I want you to eliminate, Mr. Mann, from the questions I will ask you from time to time, all consideration of the regulations for foreign commerce, for while we are given the same authority with regard to foreign as we are with regard to commerce among the States, theoretically and practically our power with regard to foreign commerce is far short of our power over internal commerce.

Mr. MANN. Yes, sir.

Senator CUMMINS. It is perfectly clear, is it not, that it is necessary for the welfare and safety of the United States that the system of railway transportation or land transportation shall be complete and adequate in every part of the country?

Mr. MANN. Certainly.

Senator CUMMINS. And no matter what it costs, we must maintain, not only for peace but for war, a system of railways that will afford full communication between all parts of our country. That is perfectly clear, is it not?

Mr. MANN. Yes, sir.

Senator CUMMINS. It is clear, too, as it seems to me, that in view of the vicissitudes of water transportation that the railways of the United States must be able at all times to reasonably accommodate all the traffic between the eastern and western parts of the United States.

Mr. MANN. When you say "at all times," Senator, there are emergencies that may happen sometimes which may throw an unsuspected, or what might be called an accidental, burden upon the transportation of the country.

Senator CUMMINS. I endeavored to put in my question the flexibility that you have in mind by saying "reasonably"—reasonably serve all parts of the country at all times.

Mr. MANN. Yes, sir.

Senator CUMMINS. I recognize that there may be days or weeks or months in which the facilities of railway transportation may not be sufficient to meet completely a sudden emergency.

Now, with that as a postulate, we have the beginning point, anyhow, that the railways of the United States must be maintained so that they can fairly do the business of the United States, if communication between the various parts of the United States by sea is cut off.

We have seen that water transportation, as between points in the United States, may be substantially prevented, first, by natural causes, such as the filling up of the canal, or by other causes, such as war, in which event we are compelled to rely not only for the movement of traffic but for the movement of troops and various impedimenta of the Army and Navy upon land transportation. Do you recognize, Mr. Mann, that it is the duty of the Government in regulating and controlling the transportation in which its people are concerned that we should attempt to reach the same end that we would reach through Government ownership?

Mr. MANN. Well, I suppose, if the Senator please, that the end that we wish to reach is, of course, the best practical result that can be brought about irrespective of the method.

Senator CUMMINS. I think my question was not as clear as it should have been. I do not want to draw you into any discussion of the controversy about Government ownership of transportation facilities, but the end of all regulation of these facilities must be the public welfare—the interests of all the people of the United States.

Mr. MANN. Yes, sir.

Senator CUMMINS. And if we choose to pursue in the future, as we have pursued in the past, the policy of committing our transportation to private instrumentalities, that does not change the ultimate object to be secured, does it?

Mr. MANN. Certainly not.

Senator CUMMINS. And in dealing with the problems which arise out of competition between water transportation and land transportation we ought to consider all the time the welfare of all the people, should we not?

Mr. MANN. By the welfare of all the people, meaning, of course, the greatest good to the greatest number, etc.

Senator CUMMINS. It is a common expression that conveys a definite idea, although it is rather indefinite in its phraseology.

Mr. MANN. Yes, sir.

Senator CUMMINS. Suppose that the United States, Mr. Mann, owned all its land transportation facilities and operated them and owned all its water transportation, or the facilities of water transportation, between points in the United States. Do you think that the Government should continue the competition of which you have spoken between the land transportation and the water transportation?

Mr. MANN. I certainly do, on the same proposition that the departments of a department store, all owned by one owner, are in very competitive competition, all striving to see which one can sell the best and sell the most goods, etc.; in fact, emulation is the very essence of life, just as discontent leads to unhappiness.

Senator CUMMINS. Of course, I do not recognize the parallel that is evidently in your mind between the various departments in a department store and these various branches of transportation.

Mr. MANN. The Government would own both. The department store owner owns all of the departments and turns over these various departments to different managers, and there is that rivalry between them which is the very essence of efficient business.

Senator CUMMINS. Assuming the Government has all the railways, and they are developed to a point where they can meet the needs of the people, both in war and in peace, it has these water-transportation facilities between certain points in the United States; it must maintain the land transportation for reasons we have seen. Now, it would not permit the water transportation to be carried on in such a way as to destroy the efficiency of the land transportation, would it?

Mr. MANN. Of course. Senator, that was one argument made against the Pacific Mail Steamship Co. operating through the canal when it belonged to the Southern Pacific Co. on the ground that the Southern Pacific could afford to lose a lot of money on the water transportation, which did not involve very much money, in order to make money on the rail transportation facilities, which represented a billion dollars. That would be the case, I think, where you have the ownership of those two means of transportation in the same proprietor.

That is the reason the Panama Canal Act gives the Interstate Commerce Commission the power and duty of investigating all railroad-owned steamship lines which may come into competition with the railroads. When the Government would have control of both of these facilities, I think the Government would endeavor to perform the best possible service for the best possible price that it could perform under the circumstances relating to each method of transportation. So, I believe they would say to the water carriers, if they owned them all, and forbade anyone else coming through the canal in the coastwise commerce, they would say, "What does it cost you; what do your manifests and freight bills show; what do you make a year? Let us see if the rates are right," and I think they would allow and make rates upon the basis of that cost of service, with a fair and proper surplus over to take care of depreciation and the like, and then, with respect to the rail carriers, I think they would perform just exactly the same method of competitive rate making at the ports where they met their own ships, and then make the same arrangements on the rest of the country, simply because it is sound and it is economic. It will encourage each line to do the best it can, because the emulation between the two lines will be bound to bring up the service and because, in the end, perfect justice is obtained and no injustice—that is, no unjust discrimination, no improper or prejudicial discrimination—is worked, and each community is taken care of, just as it ought to be taken care of if that kind of rates is made scientifically.

Senator CUMMINS. I remember the problem about the Panama Canal of which you speak, but there we were considering a case where part of the transportation facility was governmentally owned and part privately owned, and different considerations entered. But you would not believe, would you, that if the Government owned all the railroads that it would permit any competition between them with regard to business?

Mr. MANN. I certainly do.

Senator CUMMINS. What kind of competition?

Mr. MANN. Competition with the water routes.

Senator CUMMINS. I am speaking of railways alone.

Mr. MANN. I think they would find that the short-line competition ought to be met by the long line coming around to the same point, and that higher rates might be charged at intermediate points.

Senator CUMMINS. I am not saying that they might not charge higher rates to the intermediate points than to the longer distant points. I am not bringing that question in at this time.

Mr. MANN. I thought you meant land competition.

Senator CUMMINS. I was speaking about land competition alone. If the Government of the United States owned all the railroads, would it fix the rates with any reference to the earning capacity of any particular railroad?

Mr. MANN. Any particular one of the Government-owned railroads?

Senator CUMMINS. Yes.

Mr. MANN. In some cases yes, and in some cases no. That is a very complicated situation and a tremendous one to consider, for a moment. The idea of sitting down and thinking out any kind of rules

and regulations by which you can construct schedules for all the railroads in the United States is certainly one that even our greatest traffic man would want a great many months to work out. In some cases I can see where there are meritorious but weak roads where the Government would probably charge the same rates that are now being charged on those roads and lose money, and in doing so make it up on the larger roads, and under those circumstances that is one argument in favor of the unification of the railroad systems of the United States so that the strong can take care of the weak and vice versa. I have in mind one particular road, the circumstances of which were developed in the last 15 per cent case. That was the Bangor & Worcester Railroad in Maine. The president of that road went on the stand before the Interstate Commerce Commission and made his statement, and it was an impressive one, and the witness carried credence, and his statement was that as to his road 75 per cent of the traffic was lumber and food products, one of the products being potatoes, which were at that time greatly in demand, and I believe he testified that during the period immediately preceding that time potatoes were being transported from his territory as far west as Chicago.

We all know that the demand for potatoes last year was so great that the central part of the country was calling upon all sections of the country for its supply. He was charging rates which, according to all competitive circumstances and conditions that surrounded all the rest of the whole United States, prevented his getting any more—he was getting all he could get—and he could not get any more unless some other railroad was allowed to have more, and yet his condition was pitiable as far as coal was concerned, because while he was paying \$3, or something like that, for coal from the mines up to Bangor, the bad weather of wintertime had made it impossible for the barges and tugs to reach from Philadelphia to Bangor, and the result was, instead of having 100,000 tons of coal in his yard, which he considered the margin of safety, he had run down to 7,000 tons, and was obliged to go into the so-called wholesale market and pay \$10 a ton, and he furnished a statement showing he had bought coal at that price, and the result was that his road was on the rapid road to bankruptcy; and yet it was a facility of transportation that, from the governmental standpoint, was an absolutely needed transportation facility. He was furnishing food and lumber to the extent of fully 75 per cent of the tonnage he carried.

Your question brought that to mind, and I should say under circumstances like that, under conceivable governmental ownership of important roads, at least, that the Government would not make its rates in accordance with the expense or cost of operation, but would undoubtedly, in some cases, charge less than the cost of service, just as it does in the operation of the mails.

Senator CUMMINS. I have no doubt about the general soundness of the suggestion you have just made, but I did not intend to get into such detail. If the Government owned the railroads—and I do not intend to say that it should; understand me. I am not arguing upon that proposition at all. and I express no opinion about it—but suppose it owned the railroads between the Atlantic and the Pacific coasts; it establishes rates upon some fair and just basis to the terminal points and to all points between. You said, and I think truly,

that the Pacific coast could not claim in and of its own right lower rates than intermediate points; that the carrier only can claim those rates on account of its necessities. Now, it finds then that if it persists in those rates, that its business to the Pacific coast will be taken away by a water competitor. It has complete control of the water-line competitor, either through ownership or through regulation, for our power is just as great over one as the other. What would it do? Would it drop the rail rate in order to meet the water rate, or would it raise the water rate?

Mr. MANN. It would drop the rail rate to meet the natural water rate, because it would be unsound economically and inherently unjust to all the people of the United States to collect more than the fair value of the service performed by the Government for its citizens by way of the water route.

Senator CUMMINS. And that only because it would be for the best interests of the entire country?

Mr. MANN. Yes, sir.

Senator CUMMINS. Each kind of transportation should be permitted to be carried on the basis of the cost of service—

Mr. MANN. Not exactly on the basis of the cost of service. I venture to say that if the Government of the United States should take over the control of the means of transportation by water or land transportation that the Government of the United States would develop a system of tariffs remarkably similar to those existing throughout the United States on the railways. The fact is that since the war commenced and since the War Board has been established in Washington we have had a demonstration of the possible unity of the railroads of the United States as a whole, and inasmuch as the function of the railroads has been mainly service instead of rates we find, taken as a whole, the schedule of rates of the railroads of the United States are what might be called very fairly arranged with respect to the checks and balances which each and every particular condition or circumstance may bring into play with respect to those rates, and that is one reason why the change in any particular schedule affects rates, not infrequently, in a great many far-distant points, and therefore the United States, if it took over the railroads to-day, I think, would accept the schedules of rates in the country just as they are without making any material changes in them.

Senator CUMMINS. The Interstate Commerce Commission seems to have been rather busy throughout all these years in adjusting the rates.

Mr. MANN. It is a remarkable fact that any study of the Interstate Commerce Commission's work will show that they have in all, or practically all, great schedules accepted the plans of the railroads. That is what they did in the intermountain cases. They established zones, which is a pure railroad invention, and Chief Justice White, in writing the opinion, bases the power of the Interstate Commerce Commission on the mere ground that the intention of Congress was to give to the Interstate Commerce Commission the power to regulate rates and fix rates that the carriers had established before, and, inasmuch as the carriers had fixed zones before, therefore, the Interstate Commerce Commission could fix zones.

Senator CUMMINS. I do not want to get into a controversy over the justice of railroad rates. I do not agree with you about that. I think in many instances they are very illy adjusted, although I recognize that to change them materially would overturn conditions that have grown up through a long series of years.

Mr. MANN. That is the point exactly.

Senator CUMMINS. But they are very unjust according to my opinion. I am not saying that the aggregate of the rates raise too much or too little revenue.

Mr. MANN. I do not want, either, to express too much admiration for the railroads' system of rate making. I have had a great many objections to it and have raised some of them.

Senator CUMMINS. I come back to my original point. You insist that in the contingency that I have suggested, where there was no financial interest of the carriers to be observed or secured, that still the good of the whole country would require that the rates that are in competition with the water rates should be lower and the water line be permitted to charge whatever it saw fit to charge.

Mr. MANN. I will not say whatever it saw fit to charge. If the water line were owned by the Government, and the Government should proceed to control, my point is this, that it would be uneconomic and contrary to the principles of equity and justice to permit their water carrier, or, we will say, to continue to operate a water carrier and charge to the public that uses that water carrier once and a half or twice or three times as much as the ordinary rules with respect to rate fixing would justify.

Senator CUMMINS. We must not forget the original premise of the matter, that it is the duty of the Government to maintain, or be allowed to maintain, this system of railways at a high state of efficiency, and the only reason for decreasing a reasonable rate from one coast to another is that it must be decreased in order to get the business. That we assumed. It is your opinion, notwithstanding its obligations to keep up the railroads, that we must drop the rate at the competitive point to the disadvantage of the carrier?

Mr. MANN. To the disadvantage of the railroad.

Senator CUMMINS. To the disadvantage of the railroad, in order to what? To allow a certain community to avail itself of the lesser cost of water transportation. That is what it all comes to, is it not?

Mr. MANN. No, sir; it never comes to that in my mind at all. I do not think there is any situation with respect to rate making in this proposition that can be said to be favorable or preferential, whether made by the Government or made by the carriers, to the water points or to the seaboard points; and, in addition to that, I wish to say that I can not see that we can, in conceiving Government ownership of transportation facilities, place the railroads owned by the Government in a proprietary position as against the steamships owned by the Government. The steamships owned by the Government would be performing a public service and would be serving a very large number of communities besides San Francisco. They probably would operate, as far as the coast is concerned, commencing at Boston and stop at New York, Philadelphia, Baltimore, Charleston, and Mobile, with branch lines from New Orleans and perhaps the branch lines reaching up the Mississippi River to Chicago, taking

on a cargo at that point and then bringing that cargo through the Panama Canal, and they would serve the coast ports mentioned and probably transfer the cargo for the Orient, and on the return journey make the same trip, and, in fact, that very line of work is suggested by the actual rates published and the actual way port calls which have been made by these very carriers.

Now, under these circumstances, these publicly owned water lines, operating through the canal and between the two coasts, would be serving perhaps as large a portion of the public of the United States as these transcontinental rail carriers would serve. So, under the circumstances, I should not say that we should, as a Government, prefer the railroad carrier, and say now we are going as the Government to arrange matters so that the railroad carriers can make as much money as the conditions will justify, and the water carriers shall make still more than they might ordinarily be justified in charging in private ownership, or, in other words, would be charging the people of the United States for their service by water one and a quarter or one and a half or two or three times as much as the same people would have to pay if the ships were retained in private ownership. I do not think the United States would do that.

Senator CUMMINS. I will not put either the railroads or the steamships in a primary position or in a preferential position. I am assuming a common ownership of the whole, and in order to afford an illustration and to get your views more completely, let us assume that all transportation facilities of the United States, including these water lines, reaching from one town in the United States to another, are owned by one single corporation.

Mr. MANN. Yes, sir.

Senator CUMMINS. So that there is no competition, so far as the capital invested is concerned.

Mr. MANN. Yes, sir.

Senator CUMMINS. Do you not think that under those circumstances the corporation would divide the freight and allot a certain part of it to be carried by water and a certain part to be carried by the land?

Mr. MANN. Yes, sir; I am sure it would run the water carrier in such a way as to help the land carrier, but I do not think the United States Government would be controlled by such an instinct.

Senator CUMMINS. I am assuming that the United States Government would be as solicitous for the general welfare of the country as the corporation would be for the general welfare of its stockholders.

Mr. MANN. I can not see that the illustration is a parallel. The United States Government has taken steps in connection with the Panama Canal act to prevent just that thing.

Senator CUMMINS. I am not quarreling with that policy, but I think you agree with me that if the entire transportation facilities of the country are in the hands of one corporation it would not meet the situation that you have described by lowering the terminal rates. It would allot or divide the traffic to be carried, would it not?

Mr. MANN. I really think it would do that thing which it considered was to bring the most money into its pocket. Just what that would turn out to be I can not foreshadow or foresee. It is a condition that we are imagining.

Senator CUMMINS. Purely.

Mr. MANN. And which can never exist.

Senator CUMMINS. Through regulation we are trying to build up the entire country and give to each community that which it ought to have, and afford transportation as a whole at the least reasonable cost.

Mr. MANN. The ownership illustration aptly illustrates the danger of the abolition of competition between the carriers.

Senator CUMMINS. I can easily see that; but when you substitute for a selfish corporation—that is, a corporation desirous of making as much money as possible—a corporation that desires simply the general welfare, then there would be no such danger, would there?

Mr. MANN. You mean the United States Government?

Senator CUMMINS. Yes.

Mr. MANN. The United States Government, considering only the general welfare, would not be justified in asking the citizens to pay once and a half or two or three times what the service was worth because it moved by water.

Senator CUMMINS. Suppose that the railway companies, in order to secure all the traffic which their lines would carry, did not find it necessary to reduce the terminal rates in order to meet the water transportation, what would you say then as to the wisdom or justice of reducing those rates below the intermediate points?

Mr. MANN. You say if they did not find it necessary?

Senator CUMMINS. Yes.

Mr. MANN. And could yet get all the business they wanted?

Senator CUMMINS. Yes.

Mr. MANN. That would mean the water transportation costs as much as the rail transportation, and that is not the case.

Senator CUMMINS. That means there is more transportation than the water can bear or will bear.

Mr. MANN. Yes; I think that is always so. Perhaps I did not understand your question. I understood your question to be, If the rates of the water transportation at the points of competition were such that the carriers could continue to carry their rates, grading up from the coast, and still get their share of the business, what would be the condition? I say that the condition there would be that the carriage by water would be equally as expensive as the carriage by land, and under those conditions—and only under those conditions—can we expect that to ensue. At the present time carriage by water for any material distances has been accepted to be a transportation of less cost than any other form of transportation. One great reason for the difference in cost is that there is no investment in tracks or rights of way, and therefore we can hardly expect to see the time when transportation by water will be equally as expensive as that by land.

Senator CUMMINS. You therefore, I infer, are of the opinion that, without regard to the financial necessities of the railways, this country will be better built up and better served by giving to those localities which are affected by water transportation and water rates lower costs or charges than to other portions of the country?

Mr. MANN. Well, put in that way. I might answer in the affirmative; but I would like to say, in addition thereto, that that arrangement of competitive charges at the ports should be considered as a

part of the general transcontinental rates and schedules of the carriers.

Senator CUMMINS. Now, the result of that would be, if carried to its logical end, the development of both borders of the country and the underdevelopment of the central part of the country, would it not?

Mr. MANN. It would; and it is a fact that there is not a big city in the United States that is not served by water, and there probably never will be—or in the world, one might say. There might be some manufacturing communities—very prosperous and populous ones, too—but when you compare them with the great cities you will find they are situated on the water.

Senator CUMMINS. I do not think you understand my question in the way which it was asked. There comes a time, or you reach a point presently, where the cheapness of water transportation added to the land transportation for distribution ceases, does there not? You reach a point both east and west—

Mr. MANN. Where the water transportation plus the land transportation equals a normal rate?

Senator CUMMINS. Suppose you wanted to ship goods from here to Pittsburgh, the lesser cost of transportation between here and New York by water would be absorbed by the cost of transportation from New York to Pittsburgh, and it would be no less, and probably greater, than the cost of transporting your goods from here to Pittsburgh direct by rail.

Mr. MANN. Yes, sir; there is a point where those two rates meet. There is a point where the sea combination plus the rate inland to Pittsburgh, or wherever the points may be, meet the direct rates by rail across the country.

Senator CUMMINS. That is what I meant by saying if you are to give full effect to competition brought about by the lesser cost of the water transportation you will find a narrow strip of country on both sides of the country thoroughly developed and a very wide stretch of territory very inadequately developed.

Mr. MANN. That will lie generally along the line where the intermountain people are situated; but in the East, where the population is so great and development is so large as the result of so many years, that strip has disappeared. It has practically disappeared, like the boundary lines of two towns that have grown together. The fact of the matter is that the natural advantages of these coasts are just the same—that is, the advantages of the west coast and the east coast are just the same, with reference to ocean competition, and it is true that that strip that our friends love to call the back-haul territory is the territory in which the water competition is really felt. That is where it is felt, and it is felt through that strip up to the point where, as you say, the rate coming in the other direction meets it. But there is an interior part of the country which, by the way, is also served by water, where we have the great cities of Chicago and St. Louis, all served by water, and which, again, are not only using the water but, of course, are great manufacturing centers and distributing centers, and they have created about them an immense territory for distribution, and so they are reaching out both east and west.

There is a strong competition between Chicago and New York in the intermediate territory to-day, and one is getting a little farther toward the other one day and the next day the other encroaches closer to the other. In this territory we have the same situation, except we have great deserts, and we have not developed to the same intensive extent as the eastern part of the country, and probably never will. Nevertheless, we have the same development of commerce, and we find Chicago and New York by water, and Chicago by rail, and St. Louis reaching out into this country, trying to get all of it; and we have got the intermountain part of it a great deal, and they do distribute to the Missouri River and beyond, much to the disgust of the Missouri River. Kansas City and St. Louis are full of complaints about the rate situation, contending that they are getting the worst of it, both coming and going. That phrase in traffic, by the way, really belongs to Mr. Maxwell, of Denver, because he happens to be situated just on that edge which you have described. He pays the most of anybody; but that is a result which, I insist, can not be corrected, because nobody can correct it. If you pass an absolute fourth section, we will bring goods into this territory through the canal and distribute it through the back-haul territory.

Senator CUMMINS. My questions have not had in view the proposed amendment to the fourth section, making it rigid. I have in view the policy of regulating all the carriers of the United States; and that leads me to ask you, Do you believe we ought to begin regulation in the way of fixing rates on water transportation?

Mr. MANN. No, sir; I do not.

Senator CUMMINS. Why should we not regulate water transportation as completely, at least, as we regulate land transportation?

Mr. MANN. For this reason: That the railroads are exercising what is sometimes called a natural monopoly. They are using the right of eminent domain, a government power and authority, and by virtue of that right of eminent domain, and in some cases of grants of public land, they have constructed tracks and purchased rights of way, and have produced an investment—well, I used “a billion dollars,” and we might as well continue to use that as any other figure—that seems to be the modern custom and fashion. The sea, on the other hand, is free, and a sea carrier is exercising no right of eminent domain and exercising no monopoly at all, because there can be no monopoly of the sea. Any individual with a small amount of capital may charter, under ordinary circumstances, a ship, we will say, for \$100,000 and perform a journey over a route which costs nothing, where, if he would conduct a railroad between the same points he would have to invest a billion dollars. So there is no monopoly principle or characteristic in a ship, or in a regular shipping line, or in any shipping situation, but, on the other hand, there is a monopoly characteristic in the railroads. Now, it is the monopoly that must be regulated, not necessarily or at all, in my opinion, the ordinary exhibition of commercial or other activity, but monopoly; and wherever we find monopoly we must beware of its power, and therefore we must be careful to control its power, and thus we should regulate it.

Senator CUMMINS. We have been discussing the source of power, and not the wisdom of exercising it, it seems to me. You do not doubt we have the same power over water transportation within the

United States or to and from points in the United States that we have over land transportation, do you?

Mr. MANN. I do not doubt it at all.

Senator CUMMINS. It has been the policy of the United States to regulate it by excluding all but ships of American registry in the Panama Canal.

Mr. MANN. That is, in the coastwise traffic.

Senator CUMMINS. Having the power, the only thing, as it seems to me, that we should consider is, Ought we to exercise it in order to benefit the people of the country?

Mr. MANN. Yes, sir; that is what I had in mind.

Senator CUMMINS. The reasons which you are giving probably apply to the wisdom of exercising the power, namely, there is free competition on the sea and there can not be on the land.

Mr. MANN. Yes, sir.

Senator CUMMINS. If we find the free competition on the sea actually injures the people of the United States, you would have no doubt we should enter that field of regulation?

Mr. MANN. One might say to that, if the time—remembering the “if” all the time—that is, if you find it injured. I do not think it is.

Senator CUMMINS. Suppose we should find that the rates by water are too high, and we found that competition upon the sea did not reduce the rates to a fair point; should we not reduce them?

Mr. MANN. I do not think so. I do not think it is good governmental policy to interfere with a situation which is open to free and untrammelled competition. I think the competition there should be left to take care of itself; in other words, I do not believe in extreme cooperation. I believe in leaving a large freedom of competition, which, to my mind, appeals as that freedom which is so cherished by our Government to their people.

Senator CUMMINS. That is all.

Mr. MANN. I also ask to have incorporated in this hearing my statement made before the Senate subcommittee last week, I believe.

The CHAIRMAN. Is that on the same subject?

Mr. MANN. Yes, sir.

The CHAIRMAN. Is it a repetition, I mean?

Mr. MANN. No, sir; it is not. It is additional, and heard on the 19th of March, 1918, but not yet printed.

The CHAIRMAN. We will be very glad to have that, Mr. Mann, when it is printed. It will help to economize your statement here.

Mr. MANN. Yes, sir; I expect to make a brief statement only now, and the reporter, I presume, can obtain that statement if it is printed, the statement made before the subcommittee of the Senate last week.

The CHAIRMAN. The clerk can get that as soon as it is printed and incorporate it with your hearing.

(The matter referred to is here printed in full, as follows:)

STATEMENT OF MR. SETH MANN, REPRESENTING THE SAN FRANCISCO CHAMBER OF COMMERCE, SAN FRANCISCO, CAL.; ATTORNEY AND MANAGER OF THE TRAFFIC BUREAU OF THE SAN FRANCISCO CHAMBER OF COMMERCE.

Mr. MANN. In addition to representing the San Francisco Chamber of Commerce, I also, at the request of the Portland Traffic and Transportation Association, appear in their behalf before your committee.

I will say that I do not expect to trespass far upon the time or patience of the committee, inasmuch as the subject has been so thoroughly covered on behalf of the railroads by Mr. Spence and Mr. Winchell, and with respect to the position of the coast by Mr. Wettrick. I appeared and made a statement before the Joint Committee on Interstate and Foreign Commerce, and my remarks before that committee, which were delivered at San Francisco, are reported in part 13 of those proceedings, on pages 1659 to 1716, and about one-half of those reported proceedings consist of questions and answers, questions directed to me by members of the committee. I have thought that I would offer that statement here for publication in this record if the committee so desires, or at least will make reference to it as containing my statement covering this long and short haul situation before the Interstate Commerce Committee, and then, with the permission of the committee, I will leave the matter to your decision as to whether you desire to incorporate that in this hearing or not.

The CHAIRMAN. To what extent does your present statement duplicate that?

Mr. MANN. I have endeavored in my present statement not to duplicate that at all, but merely to devote myself to the proceedings and the developments of this hearing, not attempting to cover my former statement at all.

The CHAIRMAN. We will take your offer under consideration.

Mr. MANN. As I said there, and say now, and have always said, the defense of a railroad meeting the water competition at the ports is primarily a matter for consideration by the railroads themselves, and we have appeared in these proceedings as intervenors for the purpose of presenting that part of the facts which come more properly within the knowledge of shippers and commercial people. We are glad, however, to have Mr. Winchell say that he does not see that the coast cities have any proper place at such a hearing as this, because in making that statement he gives us out of his own mouth the very reason for our appearance in any of these cases. Wherever we are not wanted by the railroads there we certainly wish to be. The railroads think that we have no right to appear with respect to any of their rates or practices, and that the rates and practices established by the railroad companies are always correct. We have attacked a great many of them and have successfully done so, and instead of making a preference in favor of the coast cities, and particularly in favor of San Francisco, the history and policy of the railroad companies has been distinctly contrary to the interests of San Francisco and of Los Angeles, and of the cities in California, and favorable to other cities and other towns. I speak now of the switching charges, for example, which we successfully fought through the United States Supreme Court and succeeded in having abolished in San Francisco and Los Angeles. And the Chief Justice of the Supreme Court asked Mr. Fred Wood, in the beginning of his argument in that case before the Supreme Court, "Well, is it true, Mr. Wood, that in San Francisco and Los Angeles you make this charge and nowhere else in any other city in the United States?" This charge of \$2.50 when delivering a car when incident to a line haul. Mr. Wood said, "I believe that is so." He said, "Then, Mr. Wood, you have the whole commercial interests of the whole United States against you in this case."

I mention that as an instance to show this alleged preference of the coast cities, and particularly San Francisco, Los Angeles, and San Diego is a mere myth. As a matter of fact, we have been constantly, for the last 10 or 12 years, struggling for our absolutely legal rights, and have succeeded in getting some of them although not all of them.

As far as the carriers are concerned in this matter, I say it is primarily to their interests to defend the long-and-short-haul clause, but in that defense, as they make it, we wish to be present in order that we may be fully represented, and we find it decidedly necessary to our interests at all times to see to it that as far as our interests are concerned they be correctly represented in any of these cases, and we find we must rely upon ourselves and not upon any one else to represent those interests, as they actually exist.

So we are here, and we have been in all of these intermountain cases, for the purpose of showing our interest in the matter, and our interest in the matter has always been recognized as a proper interest of an intervenor.

We have a right, of course, to enjoy our natural advantages; we have never claimed any vested right or any other kind of a legal right in any lower rates by the railroad companies to meet that water competition. We do claim it as an economic right, an economic right which will come to us if not interfered with. If no statutes are made interfering with the natural laws of trade conditions and political economy, the railroad companies will meet at the coast cities the water competition at those points, as they always have done in all parts of the United States and in all parts of the world. And I venture this prediction, that the Government of the United States, either under its control, as at present existing, provided ships return, or even under Government ownership, if that shall ever come, will continue to find it to their economic advantage to meet the water competition where they find it, because that is nothing more and nothing less than a law of political economy, and it is in that point of view that we desire to approach this subject, purely as I have phrased it, from a point of view of enlightened self-interest, or, if you please, of business common sense, of commercial soundness, not narrow commercial interest, but of commercial soundness that will look forward to a future that will be great and prosperous and commensurate with the conditions that surround us, rather than maintain any immediate or narrow personal advantage.

Now, then, what are our interests here? I wish to enumerate them. I do not think they have all been touched upon, or all touched upon at once. As I see them, they are not only to enjoy those rates on westbound traffic which are brought to us under sea-competitive rates by the railroads, but also to enjoy those eastbound rates which carry such an immense tonnage of the products of the Pacific coast, and, if you please, of the intermountain points as well, to the points of consumption in the east and in Europe. And also we are interested in the maintenance of what may be called our distributive rates, our rates that are local, or locally interstate, if one might say so. Local, we will say, speaking of California, or local as far as our adjoining territory is concerned. Our shipments into Oregon and

Oregon shipments into California, or into Washington, or Washington into California, or to Nevada, and vice versa, or Arizona, are what may be considered our local rates.

Now, the moment we approach this proposition whereby we are to take away from the transcontinental carriers, who perform all of these services for us, an income which they have received over and above the cost of transportation from the coast competitive business, and we realize the self-evident fact—it is an axiom—that that loss must be made up somewhere, we see at once that that loss will be spread over all these various services. The losses will not only attach to the rates to intermountain points and cause those rates to advance, but they will also attach, in their proper proportion, to our local and distributive rates, and they will also attach to our eastbound rates, upon the produce and products of the coast States.

The products of California, which are shipped upon these eastbound rates—I think it is a fair statement—will exceed 2,000,000 tons per annum. That, therefore, we think is a very important interest for us to represent, and we think we are very intimately associated in that point of view, and in that regard we feel that our interests are quite similar to those of the intermountain points, notwithstanding their blindness to the facts and their inability to recognize that their rates are in jeopardy when they take these means of income away from the railroads.

Before I proceed I want to read a part of a letter from Mr. John H. Lothrop, who is the secretary of the Portland Traffic and Transportation Association of Portland, Oreg., upon this subject. It is as if he were speaking here to the committee. It is not long. After some introductory remarks, referring to the proceedings before the joint committee at San Francisco, he says, and this is his opinion:

If an absolute long-and-short-haul rule should be made, the rail carriers would have to adopt one of two alternative measures. They would have to increase their rates to the Pacific coast to a level not lower than they would carry to the intermediate territory, or they would have to reduce their rates to the intermediate territory to a level now carried at Pacific coast points. If they should elect to meet the competition of the water carriers, a reduction of intermediate rates would be necessary as far east, on some commodities, as the Missouri River. It seems to me improbable that that policy would be adopted.

If the rail carriers decided to give up the coast business, which they would do by increasing their rates to terminal points, the cities upon the coast would use the water lines and freight would be brought in at much lower rates than would apply to interior points by rail. The coast would continue to enjoy the advantages of location upon the water. The serious injury to the coast upon the adoption of this alternative would be in movement and marketing of Pacific coast products. Rail carriers would be compelled to haul equipment empty to the coast, to take care of the movement of coast products to eastern markets. It would be necessary to increase the rates eastbound upon our lumber, our fresh fruits and vegetables, our canned goods, our hops, our wool, and many other products of the forest and soil. For some considerable time business conditions upon the Pacific coast will be considerably disturbed.

Without doubt an absolute long-and-short-haul rule would entirely prohibit the movement of export and import traffic via the Pacific coast ports.

On the other hand, an absolute long-and-short-haul rule would not be without some substantial benefit to the Pacific coast country. I believe that manufacturing would be greatly stimulated and the production and use of home products would be, to a great extent, increased. The raw products, which would necessarily have to be secured in the East or in foreign markets, would be shipped into Pacific coast ports by water and there manufactured for home consumption, thereby excluding the manufactured goods of the East, which would be seriously affected by the loss of the Pacific coast business.

As to the effect upon the interior if the rail carriers should elect to meet competition of water carriers to the Pacific coast ports, rates to interior points would be necessarily reduced; but as already stated, I can not believe that the rail carriers can afford to reduce their rates and stand the effect of diminished revenue. Assuming, therefore, that they would elect to give up the business to the coast and surrender it to the water lines, a few jobbers in a few lines, on a few articles, might get some slight benefit, which would gradually decrease with the upbuilding of manufacturing and production upon the Pacific coast. Even to-day probably considerably less than one-half of the goods distributed by wholesale grocers comes from the East.

There is but little difference in rates to coast and interior points on such articles as farm implements, machinery, and miscellaneous articles used in the forest and on the farm. There is no shipbuilding at interior points, an industry using a heavy volume of tonnage at coast cities. Iron pipe for public utilities is shipped direct by manufacturers to the points where used.

Manufacturing would not be stimulated in the interior as at the coast cities, because the interior points can not avail themselves of water service for the transportation of the raw materials.

Upon lumber, fruits, grain, and other products of the forest and soil, the interior cities now enjoy as low rates as apply from the coast, some of which rates are influenced by water competition.

If the rail carriers should be, by an absolute long-and-short-haul rule, compelled to forego the westbound traffic to the coast and haul empty equipment westbound to take care of eastbound tonnage, lumber, fruit, grain, etc., the interior territory would be affected in the same way, proportionate to the volume of business, as the coast—in other words, would have to pay higher rates, and those higher rates would, without question, prevent both the interior and the coast reaching some of the markets which they now enjoy.

In this connection it seems to me that an absolute long-and-short-haul rule would result in serious injury to the middle west country. By that I mean Chicago and Mississippi River territory, and perhaps as far east, in many instances, as Buffalo and Pittsburgh. The industries and producers generally in those territories would not be able to compete, in the Pacific coast markets, with shippers located upon the Atlantic seaboard, who could use the water routes. Furthermore, it would result in manufacturers and producers located in the Middle West establishing branch factories, etc., on the Atlantic seaboard, or arranging under special contract for Atlantic seaboard shippers to take care of Pacific coast business.

It seems to me that the only district that would be benefited and not in any way injured by an absolute long-and-short-haul rule is the Atlantic seaboard. Taken all in all, an absolute long-and-short-haul rule would, for a time at least, upset the business of the entire country and seriously injure the Pacific coast without bringing any perceptible compensating benefits to the intermountain country, which is striving to have such a rule adopted. Transcontinental lines, if an absolute long-and-short-haul rule were adopted, would be seriously affected. Their revenues would be greatly diminished by the adoption of either policy; that is, of either surrendering the coast business to the water lines or meeting the water competition and reducing their rates to intermediate points.

The CHAIRMAN. Whose statement is that?

Mr. MANN. That is the statement of Mr. John Lothrop, secretary of the Portland Traffic and Transportation Association, and I want to say here that I understand Mr. Lothrop presents the view of Oregon and that part of Oregon which is west of the Cascade Mountains, and I understand that I present, generally speaking, the views of California, most of which is west of the Sierra Nevada Mountains. Mr. Hill, who represents Fresno, flirted with the intermountain points for a time, but I do not think he has ever been baptized in the faith, but the rest of California, and the cities, such as San Francisco, Stockton, Los Angeles, and other cities, are fully convinced that the interests of the coast are concerned with water competition, and all that is the natural, normal, and economic outgrowth of water competition, and because they realize and under-

stand that under this situation each community receives the benefit of water competition at the port in proportion to their proximity to the port. That is to say, if the water rate to San Francisco is \$1, it may be \$1.07 to Sacramento, because the water competition at Sacramento is the rate by water to San Francisco plus what it costs to bring the sea-borne goods up to Sacramento. That is just the measure of the competition which the railroads meet at Sacramento, and that, of course, is true with respect to every town there.

There has been so much said about the condition that will follow from the advancement of rates to the coast to the level of the intermountain points, or the making of the same rates to the coast as to the intermountain points that I want to read into this record a simple illustration of the situation which follows from water competition, which is taken from a little publication at Portland, Oreg., known as the Oregon Voter. The writer starts out in this way:

From a big dairy close to Vancouver, Wash., to the milk depot at Albina in Portland is 7 miles. An auto truck brings 20 cans of milk from the Vancouver dairy to the Albina dealer, and charges him 25 cents a can. He also carries 20 cans on the same load to a down-town milk depot in Portland—2 miles further—and charges the down-town dealer only 18 cents a can. The down-town milk is hauled right up to the door of the Albina milk depot and then on down town. Yet the Albina milk dealer is satisfied that he is being benefited by the deal. Here are the particulars:

Formerly the truck owner charged 30 cents a can for bringing 20 cans from the Vancouver dairy to the Albina milk depot. He was dissatisfied, for the \$6 revenue hardly paid him for his time and the expense for the trip. He talked of raising his rate, but the Albina dealer refused to pay more, as he could get milk from the same Vancouver dairy, brought around by boat, at total expense of only 22 cents a can, made up as follows:

	Cents.
Dairy to dock	5
Boat charge	10
Dock to dealer in Albina	7
Total	22

The Albina dealer was willing to pay 30 cents for the prompter service, but more than that he could not afford to pay; yet the truck owner was dissatisfied and wanted to charge more.

Finally the dealer suggested to the truck owner that he load to full capacity of 40 cans and take the extra 20 cans to the down-town milk depot. He could get 18 cents a can for delivering to the down-town milk depot, which was only 2 miles further haul. This gave him extra revenue from each trip, so that he was able to reduce the Albina milk dealer's charge to 25 cents a can. Now his gross earnings per trip are as follows:

20 cans to Albina, at 25 cents	\$5.00
20 cans to Portland, at 18 cents	3.60
Present income per trip	8.60
Former income per trip (20 cans at 30 cents)	6.00

Now, both the Albina milk dealer and the truck owner are pleased, for the milk dealer gets his milk hauled for 25 cents instead of 30 cents a can, and the truck owner makes a reasonable profit on every trip.

From Vancouver to Albina is interstate commerce. Suppose the Interstate Commerce Commission stepped in with a ruling that no more could be charged for the shorter haul than for the longer haul. Here would be the effect of such an unjust and arbitrary ruling:

20 cans to Albina, at 18 cents	\$3.60
20 cans to Portland, at 18 cents	3.60
Total	7.20

This would not be enough to justify the extra expense of loading, unloading, and carrying the 20 cans to Portland, and the truck owner would be compelled to abandon the Portland business and rely solely on what revenue he could get from the shorter haul to Albina. He would be compelled to charge the Albina milk dealer 30 cents a can as of old. Neither would be satisfied; no one would be benefited; and an injustice would be worked by the arbitrary application of an unsound rule just because it sounded good.

It should be said that so far as California is concerned, and I understand as far as Portland is concerned, and you have heard the statement of Mr. Wettrick with respect to Seattle, there is no spirit of rivalry as between the coast cities and these intermountain points. There never has been. We are not especially concerned with what the rates to those points may be. Our source of competition is Chicago and St. Louis and the great Middle West, particularly so since these recent adjustments went into effect, for now the Chicago man is able to ship in carloads as cheaply to all of our distributive territory as we are able to ship to the doors of our warehouses. Heretofore, upon the sea-competitive rates and upon the sea rates, we have been able to bring in our goods into our great emporiums located in these coast cities, and in the cities of the interior, such as Sacramento and Stockton, at sea-competitive rates, and we have been able to ship them out on the locals and thus do business as against these great cities of the Middle West, Chicago, and St. Louis. Under this present condition much of that business will be lost to us, and there is some business that comes entirely less than carloads, and where there are no carload rates, and on such less-than-carload business the Chicago and St. Louis dealer will now, and since last Friday, has been able to ship into our distributive territory, into our business territory, such as Fresno, at the same rates that we will have to pay to get it into San Francisco, so that Fresno, under this present situation, brought about by this abnormal condition, has become a part of the distributive territory of Chicago and St. Louis, and Fresno has been taken away on the less-than-carload rate from the San Francisco distributive territory, and I speak of shelf hardware when I speak of that.

The CHAIRMAN. Can you not get together in San Francisco capital enough to build a couple of good ships to operate between there and the Atlantic coast and control the situation?

Mr. MANN. I have a letter from my daughter to-day, Senator, in which she says her sister-in-law is to be present at the launching of some ships at the Moore & Scott Iron Works, just across the bay in Oakland there, and she writes me that this circumstance of launching is supposed to be the first of a similar occurrence in the history of the world, that three ships are to take to the water at the same time, built for the United States Government. At the Union Iron Works, Mr. Tynan, who is the managing officer of the company in its working department, told me that from now on they expected to launch a ship every 17 days, and the shipyards of San Francisco, and the Pacific coast, and the Union Iron Works, the largest in the United States, according to its output from recent reports, are working night and day and are building ships to the utmost of their capacity for the United States.

Of course, after we get out of this difficulty, when the war is over and we return to normal conditions, then ships can be built for canal service.

The CHAIRMAN. What I have in mind, and purely for the purpose of getting information for myself, was that notwithstanding all this Government activity there, and the complete absorption of the present shipbuilding facilities in that, that in view of the competition that you have just spoken of for your trade by St. Louis, Chicago, and other cities, that there would be still left enough surplus capital and energy in San Francisco to meet that by building some ships especially for that business?

Mr. MANN. Of course you realize that that could not be done now during the war.

The CHAIRMAN. I did not know whether it could be or not. I was just asking you. I suppose you have to get a permit of some kind from the Shipping Board.

Mr. MANN. My information is that it is absolutely impossible, that the shipyards of the United States are building for the United States only; that foreign ships are commandeered, and so on.

The CHAIRMAN. I know that is true as to existing facilities, but I know this also, Mr. Mann, that somewhat aside from our inquiry here that relates to shipbuilding, that the United States has resources, has men, has raw material and capital to build twice as many ships as it is building now. I take into consideration all kinds of ships; I do not say they will be able to build steel ships, but as to wooden ships. I was talking during the noon recess to a man who was amply able to build ships of that material, and he started to build double the number of wooden ships that are being built now, but they will not let him build them.

Mr. MANN. I do not question but that an absolute 100 per cent of efficiency and power of the United States in shipbuilding should be exercised right now at the present moment. There is no question about that, and there should be no room for private enterprises.

Another phase of the matter is this: I was in New York some time ago and I went about town interviewing the managers of the Luckenbach Steamship Co. and the American Steamship Co. Mr. Hamilton, formerly connected with the Luckenbach Steamship Co., was interviewed. I wanted to get an idea of what the shipping conditions were and what the idea was with reference to the withdrawing of the ships from the Panama Canal. I do not think that any blame ought to be put upon them. I found that the going charter rates were \$100 a ton; the rates on ships operating between New York and South America were \$100 a ton. Now, what do we pay through the Canal—somewhere between \$5 and \$30.

The CHAIRMAN. That is more than it cost to construct the ships before the war.

Mr. MANN. Yes. The American-Hawaiian Steamship Co., I am informed, has paid not only the total cost of each one of its ships, but perhaps several times the costs out of these charter rates. We are in a war situation; of course, the conditions are abnormal. It is a far cry indeed to guess or to vision the conditions that will occur after the war is over. Where the railroads will be and where the ships will be, we do not know. Of course, to enact such an absolute rule as this under circumstances such as these, I not only think is inopportune, but I think we should proceed as far as we can upon the basis of normal conditions, and those conditions are the conditions that existed before the war and while the canal was still in operation. I

think that is the only way we can look at the matter as reasonable men.

Mr. SHAUGHNESSY. May I ask you a question or two upon that point?

Mr. MANN. Yes, sir.

Mr. SHAUGHNESSY. In the face of the present uniform rate adjustment, as ordered by the Interstate Commerce Commission, assuming that the war remains as it is for a number of years, or that after the close of the war there will be sufficient European business lasting from three to five years, as testified to by the managers of the Luckenbach and the American-Hawaiian Steamship Cos., to keep all the seagoing vessels profitably employed in the foreign trade, rather than domestically, what would San Francisco do to offset this Chicago and St. Louis competition that you are now meeting? Would you, as Mr. Lathrop suggests, begin to build up manufacturing industries on the coast and prepare to meet that competition?

Mr. MANN. I should think it would have that tendency.

Mr. SHAUGHNESSY. If that continues for the next five years, will you be prepared to meet that competition direct?

Mr. MANN. His statement with respect to building up manufactures on the Pacific coast was based upon obtaining raw material by water.

Mr. SHAUGHNESSY. By both rail and water?

Mr. MANN. You can not get them by rail unless they also come by water, at the price.

Mr. SHAUGHNESSY. Could you not get raw material moving westbound to manufacturing centers, say, at San Francisco, instead of this raw material moving eastbound for manufacture at eastern centers?

Mr. MANN. What raw materials move eastbound?

Mr. SHAUGHNESSY. All kinds of iron, iron ores.

Mr. MANN. Not from San Francisco.

Mr. SHAUGHNESSY. I mean from Minnesota, Montana, and from other points.

Mr. MANN. I do not understand the question.

Mr. SHAUGHNESSY. What kind of raw material are you referring to?

Mr. MANN. The raw material—fuel and iron.

Mr. SHAUGHNESSY. Does not that move by rail as well as by water?

Mr. MANN. Yes, sir.

Mr. SHAUGHNESSY. Do they not move to the eastern centers by rail?

Mr. MANN. Yes, sir.

Mr. SHAUGHNESSY. Why, if you became a great manufacturing center, could not the rail lines begin to move those products to your manufacturing industries at San Francisco?

Mr. MANN. We are talking about rates.

Mr. SHAUGHNESSY. Yes; but we are talking about building up manufacturing industries so that you can meet the competition that you now fear you are going to receive from Chicago and St. Louis and these eastern manufacturing centers under the present uniform rates.

Mr. MANN. I do not follow you. This whole proposition of the building up of the coast is this: If we have sea competitive rates—

or, to put it another way, if we have sea rates, and we do not have sea competitive rates; in other words, if you succeed in your advocacy of an absolute long-and-short haul, Mr. Shaughnessy, then we will bring the raw material for manufacture into San Francisco and the coast cities by water at a low water rate.

Mr. SHAUGHNESSY. But assume that is six or seven years off; in view of the question we are now discussing, what are you going to do in the meantime?

Mr. MANN. You tell me. I would like to know. We are in a bad condition.

Mr. SHAUGHNESSY. Assume that this law was passed, why would San Francisco be worse off during the interim than it would be anyway?

Mr. MANN. I suppose you might ask that question with respect to anything. I think that answers itself. Of course, it would not make any difference. The only difference it would make would be when water competition comes back. If it never came back, it would never make any difference.

Mr. SHAUGHNESSY. Our contention is that the immediate effect of the passage of this legislation is important to us.

Mr. MANN. Well, I will answer that in this way. I will say that if I should happen to be a United States Senator or a Congressman I certainly would not pass a law that I did not intend to enforce. The passage of the law is in view of the return of water competition, and it means when it comes back the carriers should not be allowed to meet it. It would be deception to your people to have them invest on this theory, if they should learn afterwards that the passage of this law was merely for temporary purposes and to induce them to invest money, and that when the water competition came back the law would be repealed.

Mr. WETTRICK. I am interested in knowing how Mr. Shaughnessy can be interested in the passage of the long-and-short-haul clause. There are no violations so far as you are complaining, are there?

Mr. SHAUGHNESSY. I tried to make that clear in my opening statement.

Mr. WETTRICK. You have asked Mr. Mann why we should object to the enactment of such a law if it is going to be five or six years before conditions change after the war. Taking that view of the case, why should you insist upon the enactment of the law?

The CHAIRMAN. This is arguing the case from the respective sides. I do not think that it would enlighten us a great deal to follow it up. Your question, Mr. Wettrick, does not really require an answer. Your point is a good one, and I understand what you are driving at.

Mr. SHAUGHNESSY. There is a vital distinction. It may be that for the next six or seven years there will be no competition, and the present order of the commission will remain effective, thereby maintaining a system of absolutely uniform rates to the Pacific coast and all of the interior country out there.

Mr. WETTRICK. Then, you do not need the law.

Mr. SHAUGHNESSY. This is why we do need the law. We want it as a matter of security that we may hold ourselves out to capitalists and also to outsiders whom we shall invite to invest out there, so that we can, by a declaration of Congress, say that they shall at least

be given as good a rate as San Francisco or Los Angeles, permanently.

Mr. MANN. Mr. Chairman, I would prefer to postpone the discussion until after I finish my statement.

The CHAIRMAN. Yes; I prefer that you do that, too.

Mr. MANN. Now, then, I want to illustrate this point which has been made. I want to make it again.

I am speaking of Youngstown, Ohio; Canton, Ohio; Chicago; St. Louis; and Pittsburgh, if you please. If we are to depart when we return to normal times from the system of rate structure which has prevailed in the United States since, we might say, the invention of railroads, and if we are to adopt an absolute long-and-short-haul clause and are to accompany that with a distance tariff, by which the longer distant point shall pay a higher rate than the shorter distant point, or, in other words, if we shall act under an absolute and rigid fourth section with graded rates, then when the water comes back Chicago will pay more, so will Canton, so will Youngstown, Ohio, and so will Pittsburgh, Pa., to San Francisco, and the whole rich consuming country on the western coast, than New York and the Atlantic coast will pay on any and all commodities consumed in that territory, if the Atlantic coast transports them all by sea from the Atlantic coast to the Pacific coast cities. That is axiomatic. We must all admit that water carriage is cheaper than rail carriage. It shows the immense interest the country is taking in this question. It shows the interest the people of the United States, of which we are probably a part, although we are on the other side of the Rocky Mountains, are taking in these terminal rates, because in August, 1916, when the carriers, in response to the order of the commission to make their rates westbound comply with what we call order No. 124, the percentage order—7, 15, and 25 per cent—presented their rate tariffs to the commission, we opposed them at once, because they had raised our rates, and they had also raised the intermountain rates in a great many cases. We protested and we came here to Washington to a hearing before the committee on protests. We found in the parlor, on the top floor of the New Willard Hotel, people from all over the United States protesting against these same rates.

Why, there were representatives from Chicago, Pittsburgh, and New York. There were great grocery houses, great pipe-manufacturing concerns, great steel manufacturers—all intensely interested in the rates to the Pacific coast. Why, millions or hundreds of millions of dollars in freight rates were represented by these people.

I remember a man representing the great National Tube Co., of Pittsburgh, who was there protesting against the rates, these rates to the coast. He said, "I do not care what the rates to the intermountain territory are; I want to ship my goods to the Pacific coast." I asked him if he shipped by water during the intense time of water competition. He said that he had shipped 20,000 tons, but that after the schedule C rates went in he went to the rail. He preferred the rail if he could get a rate by rail. The whole United States seemed to be interested. It was a great surprise to me that so great a part of the United States was interested in the coast rates. That is what will happen if you change the schedule of rates and make an absolute long-and-short-haul clause. The Atlantic and Pacific

coasts will do business by sea and the rest of the country will have a little traffic organization of its own.

I think that Mr. Winchell was very wise when he said to Senator Pomerene the other day, "Senator, I suggest that you consult your manufacturers at Canton, Ohio, and Youngstown, Ohio, as to how they will be affected by such an arrangement of rates." Take those men who are traffic managers and who are expert traffic men, many of them having spent 20 or 30 years in the employ of the railroads. They understand the situation and can see what it will lead to. Of course they understand the history of the rates.

We are interested also, on the coast, as a corollary to this other interest which I have shown in having carriers that are financially sound. We want them able to give good service, with fine tracks, well kept up, with good equipment, and plenty of cars. Yet there is hardly a road out there on the Pacific coast, except the Southern Pacific, that has not had the experience of a receivership. That includes the Atchison, Topeka & Santa Fe in the past, and it shows how easy these things may happen. The Santa Fe road is a great road and one of the most powerful roads. The Union Pacific road is another powerful and great road, and yet they once went into the hands of receivers.

The moment you interfere in a serious way with the income-producing powers of the railroads the step to a receivership may be but six months or a year off.

I remember in the 15 per cent hearing a showing was made on the part of the Southern Pacific that they would lose very much money in 1917 over 1916 because of great advances. There were great advances, but we figured from their own statements, and put in those figures and showed to the commission that the Southern Pacific would make, during the year 1917, notwithstanding all the increased costs that they claimed were admitted, \$12,000,000 more than they made in 1916, absolute net income; and 1916 was the banner year of their history.

Their reports of net incomes for the calendar year 1917 show an increase over 1916, notwithstanding this increase in expenses of \$10,000,000.

You say, "Well, if that is the case, then why can't they afford to lose this even at the present time?" For this reason, that the Southern Pacific Co. is now operating to practically 100 per cent of its efficiency. It has carried nearly twice as much freight, according to the testimony before this commission in 1917, as it did in 1916. When you increase the gross by such immense sums you may increase the expenses by very large amounts, indeed, and yet the net may increase; but having reached the summit of your efficiency, your 100 per cent of efficiency, if your expenses then continue to increase—and that is the story and the proof—your net goes down, and then your loss begins to accrue. So that under those conditions it is easily shown what might happen under normal conditions. You can see what would happen to any company that is running as close as they must under normal conditions. It would clearly appear that if the Southern Pacific had not done twice as much business it would have lost much money. Under normal conditions you can readily see that neither that company, great as it is, nor any other great transconti-

mental company, could afford to lose three, four, or five million dollars velvet, net, that comes into their hands from the coast business, and which they might lose if they were not able to take care of it.

Now, in conclusion, for I have not endeavored, as I have stated, to cover this whole subject, because it has been so well covered before, I want to invite the attention of the committee to some extracts from one who may be called the Nestor of rate making or of railroad transportation, and that is Prof. Hadley, who has been referred to heretofore—Arthur Twining Hadley, president of Yale University at the present time, who some 30 years ago wrote the first textbook on railroad transportation, and it has remained an authority ever since. In his book *Railroad Transportation*, at page 114, he discusses this subject as follows:

Where a railroad is the only means of conveyance it can charge what the traffic will bear, without restraint. Where it comes into competition with a water route or with another railroad its charges are brought down to the lowest possible figure. The points where there is no competition are made to pay the fixed charges, while the rates for competitive business will little more than pay train and station expenses. It is better to have business on those terms than to have it go by the rival route.

Where one place has the benefit of water competition and another has not, it is hard to devise any effective means of getting rid of the differences. We are apt to think that because these local discriminations are an evil it must be the fault of somebody. In our anxiety to get rid of the evil we are apt to overlook the natural causes which led to it, and sometimes must lead to it almost of necessity. That local discriminations are a most serious evil no one can doubt; that they are exaggerated and in many instances flagrantly exaggerated by the short-sighted policy of the railroad managers is equally certain. But there are many instances where the railroads are not responsible for them and where it is worse than useless to try to prohibit them by law. We are not arguing in favor of this system but against the popular remedy—the statute.

Suppose it is a question whether a road can be built through a country district lying between two large cities which have the benefit of water communication while the intervening district has not. The rate between the points must be made low, to meet water competition; so low that if it were applied to the whole business of the road it would make it quite unprofitable. On the other hand, the local business at intermediate points is so small that this alone can not support the roads, no matter how low or how high the rates are made. In other words, in order to live at all the road must be assured two different things—the high rate for its local traffic and the large traffic of the through points, which can only be attracted by low rates. If they are to have the road they must have discrimination.

On page 118 Mr. Hadley refers to the history of the Granger legislation and the results to be learned from that period of railroad history.

In Wisconsin a law was passed during that time called the Potter law, which attempted to make the rates per mile for local points nearly the same as they had been for competing points; in other words, to reduce the intermediate rates to the level of the terminal rate. He says that the result was disastrous. The old road struggled on as best it might, losing money all the time, but no new ones were built, and the local points could not get the service they needed. They suffered severely. After two years' trial the law was repealed.

On page 135, speaking again of the Granger legislation and the Potter law, he states that whereas the railroads found it impossible to cause these laws to be repealed, or to break them before the courts,

the economic laws, or the laws of trade forced their repeal. He states:

The law reducing railroad rates to the basis which competitive points enjoyed left nothing to pay fixed charges. In the second year of its operation no Wisconsin road paid a dividend; only four paid interest on their bonds. Railroad construction had come to a standstill. Even the facilities on existing roads could not be kept up. Foreign capital refused to invest in Wisconsin; the development of the State was sharply checked; the very men who had most favored the law found themselves heavy losers. These points were plain to everyone. They formed the theme of the governor's message at the beginning of 1876. The very men who passed the law in 1874 hurriedly repealed it after two years' trial. In other States the laws either were repealed, as in Iowa, or were sparingly and cautiously enforced. By the time the Supreme Court published the Granger decisions the fight had been settled, not by constitutional limitations but by industrial ones.

On page 141 Mr. Hadley speaks again of the absolute long-and-short-haul clause. He says:

As a statement of what is generally best for the community or as a general line of railroad policy it is undeniably right. Apart from the temporary disturbance of business there would be no great objection to enforcing it by law, provided that law can be made to reach all the rival routes. If it can not, you cripple one set of routes to the advantage of another. Consider what would be the probable effect if Congress should pass a short-haul bill and it should be found possible to enforce it. Our roads would then be forbidden to make their through rates lower than their local ones. They could not reduce the local rates to the standard of their through rates without destroying their profits. They would have to raise their through rate. This would have the effect of sending through shipments of grain via Canada, where the roads would be subject to no such restriction. The chief gainers from the passage of any such bill and almost the only ones would be the Englishmen who owned the Grand Trunk Railway in Canada.

Similar attempts in Europe, backed by far greater power and opposed by less obstacles, have failed from precisely the same difficulty—either the international competition or the competition of water routes.

The CHAIRMAN. I do not quite understand Mr. Hadley's concluding reference to shipments of grain by the Grand Trunk Railroad. In the first place, as I understand it—of course, it is a long time since that was written—there have been a great many changes in the intervening time, and progressive railroad men have put into effect the very thing which he said would be so disastrous, would have such disastrous results on eastbound traffic, which is the only way that any considerable quantity of grain moves.

Mr. MANN. Well, as to the situation at that time, I must admit that I do not remember it myself. I took his statement, however, as that of a man who is considered an authority.

The CHAIRMAN. I was just endeavoring to apply it to what has transpired since and what has been testified to in this hearing.

Mr. MANN. I will say this, that I do know this with respect to westbound freight; I do know that there was a time when westbound freight into the coast was brought by the Canadian Pacific Railroad and brought down from Canada to the south as far as San Francisco because the rates were made lower by that line. What the rates now are I am not sure, but I understand the Canadian Pacific reaches Spokane. I suppose there is some gentlemen's agreement somewhere.

The CHAIRMAN. Well, we do not import much wheat from there, anyway.

Mr. MANN. As to the wheat situation, I will rest that upon what Mr. Hadley says.

Just one more point and I shall be through. I wish to refer, for a moment, to the question which has been injected into the whole matter by Mr. Lyon. As I understand him frankly to say, he desires for his company—which he very loyally represents, and represents nothing else in the world—to have all the carriage of business between the two coasts and not to have the railroads participate in it at all; that is to say, when normal times return.

There is one point that has occurred to me which I think should be borne in mind, and that is this, that the whole situation with respect to the coast competitive rates is in the hands of the water carriers. They control it under present conditions. If the water carriers make a certain rate and hold to it, the rail carriers can never go below that rate. That will fix it. They can hold it, and they need have no fear that the railroads will do anything more than ask for an equivalent rate. By an equivalent rate, I should say that that would be about 10 cents higher. For instance, if the rate to the coast by water is 90 cents, the railroads will make a rate 10 cents higher. That is not so much by reason of the advantage in rapidity of the service now, because the carriers through the canal have approached the rapidity of the rails to such an extent that there is not so much difference. I think one of the fastest ships went through in 18 days, and it is a common thing for them to make a trip in 22 or 23 days, while the average time consumed by the railroads is 21 days. Notwithstanding their published statements, 21 days is about the average time that it takes a car under ordinary conditions to move from New York to San Francisco, so time does not cut much figure.

There is the subject of sea damage; there is insurance, which one does not pay on a cargo that moves by car; there is the additional advantage of delivery at a spur track, and so on, and a man must go to a wharf and truck his goods to the store. All those matters will figure up to make a differential over the water rate, which the rail carrier may still charge, and the commission always makes that differential on the rate.

Take, for instance, the steel rates paid from Pittsburgh. The commission, it is true, was a little illogical there, I will admit, but perhaps they could not help themselves. They made a rate of 55 cents. They based it on the 30-cent rate that the American-Hawaiian Steamship Co. was carrying. It was understood by most everybody, not only the carriers, that the same rate would be extended to Pittsburgh and the Atlantic coast as soon as the carriers could make arrangements with their eastern connections as to divisions on that particularly low rate.

Mr. WOOD. You mean the 55-cent rate from Chicago?

Mr. MANN. Yes; the 55-cent rate from Chicago.

Well, after the 55-cent rate had been allowed from Chicago—not long afterwards—the carriers did make their divisional arrangements with their eastern connections, and they were about to file the 55-cent rate from Pittsburg, everyone understanding that they had been granted that and that they would be permitted to file it without further hearing. They were stopped, however, by the commission. The commission said that they must have a hearing on this rate. At that hearing it was developed that the 30-cent rate had been

advanced to 40 cents. The 55-cent rate was in, but they had the problem of fixing a rate from Pittsburgh under the new conditions. The rate from Pittsburgh to New York is 16.9 cents, which, plus 40 cents, by water, makes 56.9 cents. It makes practically 57 cents.

Under the differential above the water rate which the carriers always charge, and the commission requires them to charge, they could not make less than a 65-cent rail rate, as compared with 57 by water. So, then, we had an anomaly which remained in the tariff until recently, until last Friday, in fact, of a rate from Chicago lower than a rate from Pittsburgh, Pittsburgh being nearer the coast and therefore more subject to water competition than Chicago; but they had fixed that 55-cent rate at a time when the last paragraph of the fourth section looked somewhat more formidable, I believe, to the commission, than it does to-day.

I mention that to show that a differential between a rail rate and a water rate is always carried.

Now, while the solicitude of our friends from the intermountain country for a merchant marine is indeed touching in this matter, and we should be glad to have their suggestions, yet at the same time I do suggest that the water carriers did have, before they retired from the scene, the whole matter in their own hands, because they fixed the rates. They had it in their own hands, unless they are not satisfied with anything less than the whole business. With that position established, it seems to me they will have to retire to the point where the little boy stuck his finger in the pie to get a plum. They may get the plum, but I do not think that the United States Government will turn over the whole business to their transportation lines.

Mr. BARTINE. May I ask one or two questions?

Mr. MANN. Judge Bartine, I shall be very glad to answer any questions, provided they are pertinent.

Mr. BARTINE. They are pertinent, because they touch upon what you have said. In the first place, before asking you any question, allow me to say that the solicitude of the intermountain people on behalf of the merchant marine in point of benevolence does not approach your solicitude for the intermountain country. But that is aside from the point.

You recognize the fact that under the last order of the Interstate Commerce Commission your situation at San Francisco is identically the same as it would be under the long-and-short-haul law under the existing schedule of rates?

Mr. MANN. I think I can say so.

Mr. BARTINE. Now, you are opposing this law because you are expecting a return to normal conditions; isn't that true?

Mr. MANN. Surely.

Mr. BARTINE. Under which this present adjustment might be changed and the rate to the coast might again be lowered; is not that the case?

Mr. MANN. Yes, sir.

Mr. BARTINE. Now, we are proposing this law because we do not want that thing done. Will you not concede that we have the same right to look into the future that you have?

Mr. MANN. You have the same right, but perhaps not the same ability.

Mr. BARTINE. We will see about that. We have shown it thus far. The logic of our position is the same from that point on. Does it not depend entirely upon the question of which one furnishes the better argument as to his position?

Mr. MANN. Yes, sir; but there is only one argument here.

Mr. BARTINE. We will have to see about that.

Senator HENDERSON. Mr. Mann, I understand from your statement that the water rates are all in the hands of the water carriers?

Mr. MANN. Yes, sir.

Senator HENDERSON. Have you ever looked into the matter as to whether or not the Congress has power to make laws governing water rates?

Mr. MANN. Yes, sir. I think Congress has that power, and it certainly has made laws with regard to it. They have in this city the Shipping Board, with authority to fix maximum rates above which the water carriers could not go; but, of course, below that they might have the discretion to fix rates such as they saw fit to make.

Senator HENDERSON. Then, Congress would have power to regulate water rates, if it saw fit, in the future.

Mr. MANN. I think they have.

Senator HENDERSON. Going back for a moment, I understood you to say that the banner year for the Southern Pacific Co. was 1916?

Mr. MANN. Prior to 1917; yes, sir.

Senator HENDERSON. And in 1917 they reached 100 per cent efficiency, according to your statement?

Mr. MANN. I base that statement upon the way I understood the testimony of Mr. Spence and Mr. Winchell.

Senator HENDERSON. They did a better business in 1917 than in 1916?

Mr. MANN. A larger business.

Senator HENDERSON. A larger business?

Mr. MANN. Yes, sir.

Senator HENDERSON. Do you know whether or not it was a more profitable business; did they make more money?

Mr. MANN. Yes, sir; they made more money.

Senator HENDERSON. So that 1917 was really the banner year up to the present time?

Mr. MANN. Yes, sir; it was.

Mr. CAMPBELL. May I ask one or two questions?

Mr. MANN. Yes, sir.

Mr. CAMPBELL. Do I understand from Mr. Lothrop's letter that he thinks the effect of an absolute long-and-short-haul clause would be to build up the manufacturing on the coast?

Mr. MANN. Yes, sir; if we had water competition.

Mr. CAMPBELL. Yes; I mean after water competition comes back.

Mr. MANN. Yes, sir.

Mr. CAMPBELL. Why isn't that desirable?

Mr. MANN. Why, isn't it desirable?

Mr. CAMPBELL. Yes.

Mr. MANN. I think it is desirable, but I should think that manufacturing on the coast would be better advantaged by having two methods of transportation and also by maintaining at as low a basis as the rule of reasonableness will permit the distributive rates which carry manufactured articles to the consumer.

Mr. CAMPBELL. You differ somewhat from Mr. Lothrop. You rather think that manufacturing would be better served by both the competing lines, while Mr. Lathrop seems to think that the direct result of the passage of this law would be the stimulating of manufacturing on the coast, as I take it from his letter.

Mr. MANN. I understand him to say—and of course, you know I have not talked with him; he sent me this letter and I read it because he asked me to represent his association—I understand his position to be this: As you increase the difficulty of shipping manufactured articles to the coast you encourage the establishment of manufactories on the coast. Now, then, if the long and short haul clause is absolutely enacted, and the source of the transportation of articles of that sort—manufactured articles—is interfered with and obstructed, the tendency, under the circumstances, and to that extent, as I understand from Mr. Lathrop's letter, would be to encourage the additional manufacture of those articles on the coast.

Mr. CAMPBELL. It would be of benefit to the entire intermountain country, would it not, to have manufacturing fostered even upon the Pacific coast; that is, the entire intermountain country would be more benefited by buying manufactured products from the Pacific coast than the Atlantic?

Mr. MANN. I surely hope so.

Mr. CAMPBELL. There would be the general tendency to build up the whole section, would there not?

Mr. MANN. The manufacturing—

Mr. CAMPBELL (interposing). The manufacturing in San Francisco would be a benefit to Reno.

Mr. MANN. I believe it would.

Mr. CAMPBELL. And the building up of manufacturing in Seattle would be to the benefit of Spokane, would it not?

Mr. MANN. I believe it would. I believe there would be a mutual benefit that would arise there. I think the increase of manufactures on the coast might tend to increase the manufacturing at Spokane.

Mr. CAMPBELL. I think there is no doubt about that.

Mr. MANN. But I have some hesitancy about some other points, possibly. Take Phoenix, for example—

Mr. CAMPBELL (interposing). If Mr. Lathrop's conclusions are sound, then the passage of this law would be a real benefit to the coast and the interior?

Mr. MANN. He does not mean that. He means this, that considering the various conditions and the tendencies this way, that way and the other, the best result that can happen to the coast is to have an excellent land and water service by rail and by boat, with both of them in the best possible financial condition. He agrees with the rest of the coast cities that this would be to the best interests of the intermountain points as well; that they will get better service at lower rates if they let the railroads have these profits; but if you restrict some of it, the tendency may be to cause the coast cities to lie back upon their own resources as far as they can.

Mr. CAMPBELL. Just one other point. The assumption is that you think by the passage of this act the railroads would go out of the coast business; is that the idea? Do you think that would be the natural result, that they would have to go out of the business?

Mr. MANN. I do. I can not see any other horn of the dilemma.

Mr. CAMPBELL. You know at the time schedule C was formed those low rates were made, and that by the increase of the minima the railroads made more net revenue out of the business than ever before?

Mr. MANN. It is some time since I saw those statements. I think there were some figures of that kind, but I would not be prepared to say it was true in all cases. We figured the minimum revenue, the car mileage, and so on, and I think there were some few examples, as my memory serves me, but my memory is not sharp on the proposition of its being westbound. As I remember it, the decrease in the rate, the fruit rate eastbound to 62.5 cents and the increase of the minimum to 80,000 pounds, yields a higher revenue than at 85 cents with a 40,000-pound minimum.

Mr. Wood. It also carried an additional weight in the car.

Mr. MANN. Of course.

Mr. CAMPBELL. The bigger the load of the car, the more the net revenue; isn't that true?

It cost very little more to move a full load than a smaller load?

Mr. MANN. Of course, there are limitations to that rule.

Mr. CAMPBELL. But that is the general rule?

Mr. MANN. You might put it this way, I think, more accurately, that you may reduce the rate and increase the minimum and still get the same carload rating.

Mr. CAMPBELL. Yes. Those increases of minima were general throughout the western territory, were they not, in your schedule C?

Mr. MANN. I do not think I shall try to answer that question. I do not remember well enough.

Mr. SHAUGHNESSY. You remember as to structural steel or iron pipe?

Mr. MANN. What was the minimum?

Mr. SHAUGHNESSY. Sixty thousand.

Mr. MANN. From 40,000 to 60,000?

Mr. SHAUGHNESSY. I think it was from 40,000 to 80,000.

Mr. MANN. From 60,000 to 80,000?

Mr. SHAUGHNESSY. Yes.

Mr. CAMPBELL. I think they had two, as I remember it. I think they had two rates. I know they had on some of those things.

The CHAIRMAN. Are you through, Mr. Mann?

Mr. MANN. Unless some one desires to question me.

The CHAIRMAN. Unless there is some other witness here representing the coast cities I think we had better take a recess until tomorrow morning at 10 o'clock, when Commissioner Clark, of the Interstate Commerce Commission, will make a statement.

Mr. MANN. I wish also, if the committee please, to refer to the statement of Interstate Commerce Commissioner E. E. Clark, which was made before the Senate subcommittee last week.

It remains, therefore, for me only to make to this committee a statement of our position as representing the coast and that portion of the United States that is tributary to the coast, and which may be generally described as that portion of the country which lies west of the Sierra Nevada Mountains and the Cascade Mountains.

First, I want to say that we of the coast have an interest in the matter of these transcontinental rates additional to our interest in having what may be called and what have been called competitive

rates established to the coast cities in competition with the rates maintained by the water carriers under normal times. That is the interest which we have in being served by carriers, both by land and sea, who are prosperous and financially strong and able to supply that service which only such carriers can supply, for we use these rail carriers not only in bringing our traffic from eastern points but also with equal, if not more, importance in the transportation of the products of this territory to the markets of the United States and the world. And then, again, the local service which these carriers perform for us is of absolutely vital importance to our continued existence as commercial cities.

It is a notable fact, which has not yet been mentioned, I think, in these proceedings, that the intrastate traffic of the carriers within the State of California bears a much larger ratio and higher proportion to the interstate traffic within that State than is commonly found in other States of the United States. In other words, it will sometimes divide evenly in the Central West and in the East, and very often the interstate business of the Central West and the East will exceed the intrastate business; but in California the relationship is found as 25 to 75 per cent, the local business of the State being 75 per cent, and the interstate business being 25 per cent. I mention that to show the very great importance that the prosperity of these carriers bears to us in our commercial relationships throughout the State, as well as throughout the Nation, and the grave interest that we must take in these proceedings entirely outside of the proposition of what are called terminal rates.

Now, then, we take it as an arithmetical or mathematical truth, which is inevitable, that if you take from these carriers—these trans-continental carriers that serve us, and we practically have none others—if you take from them the ability to add to their net income that part of the net income which comes from the coast-to-coast business, then, no matter what that sum may be, it must be obtained by the carriers from some other source if they are to continue to receive that income upon the investment which the Interstate Commerce Commission in its wisdom has permitted them to receive. I say "addition" to their net income, because, whatever the carriers make out of this coast-to-coast business, if it is taken away from them, will reduce their net income by just that amount, whatever it may be. Now, then, if this income which they are receiving in normal times from this business is so taken away from them by reason of their withdrawal from this business, then the burden of supplying that income must necessarily fall upon the other business of the carrier. That other business of the carriers is handled by these important roads which carry the products of this great, fertile territory to the United States and to Europe, and also by those domestic, local portions of those lines which serve and distribute our products, our manufactures, and our merchandise or commerce throughout the State of California into Oregon, Washington, and our neighboring States. Inevitably it seems to me that it is mathematically true that those rates would have to bear their proportion of this additional charge and would therefore necessarily be increased.

It is sometimes said to us of the coast: "What is your worry in this matter? Why are you interested here? We are considering, of

course, in all these matters, normal times. Under normal conditions you have the steamships through the canal bringing you the sea rates to your ports, and therefore what is your interest in the matter? In fact, why should you not be better pleased with an absolute long-and-short haul clause, which would give you a monopoly of the business as between the Atlantic coast and the Pacific coast by way of the waterway and thus enable you to distribute those goods back into the interior on a basis that could not be met by any rail carriers coming west under an absolute and rigid long-and-short-haul clause?"

To the extent that it goes it is true, but it does not go far enough. In the first place, we want to use both carriers; that is both the rail and the water. We find it to our advantage to have a rail service as well as a water service, and the rail service, as has been frequently described here, has some circumstances or superiority over the water, which enables them to charge a somewhat higher rate than the water rate, and yet to meet it. And then we must have distribution, and the power of distribution, and if our local rates from the port out are to be increased to that extent, our power of distribution is lessened even upon the sea-borne goods, and that also follows with respect to all local rates, whether they be merely within the State of California or leading into these neighboring States. And this is also true with respect to this great movement of the western products of the soil and of the forest, which are moved in millions of tons per annum to the east.

It is in the testimony in these fourth-section cases that at the present time 95 per cent of the products of California, largely in the form, of course, of canned goods and vegetables, and canned salmon and the like, move out of the State of California, destined to the various markets of the country and to Europe, and that a very conservative estimate of that movement out of the State of California would be some 2,000,000 tons per annum. Think for a moment of the nature of these commodities produced at and shipped from the Pacific coast upon the eastbound rates? They are substantially all of them necessities of life—lumber and food products very largely. Therefore, the whole United States is interested in the volume of these eastbound rates upon the coast products, and that was most remarkably exhibited to us all when the protests were heard before the protest board in August, 1916.

Then we found when the carriers, under the order of the commission, had proposed advances upon these rates, that representatives of the shippers and business men and merchants from all over the United States were there to the extent of 400 or 500, and we few people from the coast, when we got there, found the room crowded, and the whole United States, from New York to Kansas City, and Chicago to New Orleans, represented, and protesting against the advance upon the rates prevailing upon the products of California, Oregon, and Washington in which they are dealing and with which they are supplying the retailers and consumers of the United States. So that in that assemblage there were two divisions made for the purpose of the hearing. There were those interested in the eastbound rates, and they were very numerous, and they were heard first; and then there were those interested in the westbound rates, and they were heard later on, and thus the 400 or 500 people there, representing the

greatest and largest industries of all kinds, manufacturing as well as mercantile, were heard upon the rates, east and west bound, from the Pacific coast.

I say this to indicate that this is not a matter local to the Pacific coast, but affects the whole United States, and that the transcontinental rates, east and west bound, are not a coast consideration, are really not an intermountain consideration alone, but affect the whole United States in every part and portion of it. I think I may say that without in the slightest degree exaggerating the facts.

I want to say this, too, that we upon the coast have never considered that we have been treated in any preferential way by the transcontinental carriers. We feel that we have enjoyed a privilege which comes to us from economic laws applied to natural rights. We have the ocean, and the carriers could meet those rates or leave them as they saw fit. If they found they could make some money out of such rates, they elected to meet them and carry some of the goods, but they did not do it in order to build up San Francisco or Portland or Seattle or Los Angeles; they did it to make some money that they could not make any other way. In other words, they did not do it for fun, and they did not do it for any philanthropic reasons, and we are under no obligations whatsoever of any kind or character to the transcontinental railroads by reason of the fact that we have received lower rates. Now that the ships have left us, the carriers, under order of the Interstate Commerce Commission, have raised those rates to the level of the intermountain points, and we no longer receive any less rate than the intermountain points.

The CHAIRMAN. You do not mean the commission ordered it, but it simply permitted it?

Mr. MANN. No, sir; I mean that the commission ordered the carriers to comply with the fourth section.

The CHAIRMAN. In other words, to cease charging more to intermediate points than to any other points? It did not order them to continue their high intermediates?

Mr. MANN. They ordered them to comply with the strict rule of the fourth section, and, of course, there were various ways in which they could comply with it. They complied with the order by raising the rates to the coast to the level of the intermountain points, and they have filed with the commission a request for permission to make those advances as required by the law of Congress adopted last August, which requires that the carriers shall not now make any advance in rates without prior permission of the Interstate Commerce Commission; and these carriers did so apply, under this law, to the Interstate Commerce Commission for permission to make these very advances, and that permission has been granted by the commission.

The CHAIRMAN. Because the rate that was advanced had been permitted to be made on account of water competition, which had ceased to exist?

Mr. MANN. On account of the cessation of water competition.

The CHAIRMAN. I know; but the rates elsewhere have been made as low as they were to the distant terminals on account of water competition, and were not therefore normal rates? In other words, they would not have been permitted, if it had not been for the ocean rate?

Mr. MANN. Certainly not. The commission would not have permitted the lower rates to be made if it were not for the ocean rate.

The CHAIRMAN. Because it discriminated between the intermountain sections of the country?

Mr. MANN. Yes, sir. If there were no ocean, there would be no ocean rates, either by ocean or rail.

The CHAIRMAN. The rates could have been advanced in part to the terminals, and reduced in part to the intermediates, and made level, without advancing them on the coast to the full intermediates.

Mr. MANN. In all these questions, which involve the circumstances of what the rate ought to be, it seems to me that we ought to resolve ourselves, or this committee, into a rate hearing, or else accept the Interstate Commerce Commission's judgment on that proposition.

The CHAIRMAN. We do accept it absolutely.

Mr. MANN. The situation is so complex and it has taken so many years of time to examine into the details of this situation that I am sure this committee, if it wished to consider it, would have to set apart at least six months of their time, if they were going to hear all of the testimony and examine into all of the facts that relate to this situation. The fact is that the commission has done that, and the commission has authorized these rates.

The CHAIRMAN. I know that they authorized them, but they did not order them to advance.

Mr. MANN. They permitted them, sir; they gave their permission to that advance, and that, of course, is itself an act of the commission, a quasi judicial act of the commission; but that is by the way. I merely mention that as the fact that exists to-day.

We do not regard, and never have regarded or contended that we had any vested right, as we are sometimes charged with, or that we are in the enjoyment of any preference, as we are sometimes charged with, under normal times, when we received lower rates to the coast, but rather that we were enjoying the effect of our natural advantages, and that we were enjoying a privilege that comes to us directly from the conditions which nature has imposed, and, indeed, brings about the location of cities upon the water.

That covers the statement I wish to make about our interest in this matter, which I say is much broader than the sea-compelled rates, as they are called. And we may say that, as far as sea-compelled rates are concerned, or as far as the lower rates from coast to coast are concerned, we are in no grave situation wherein we feel that this part of the matter is absolutely vital to us, because when the ships return we will have the sea rates, whether the carriers elect to meet them under existing law or not. And it always has followed and always will, although latterly under very severe restrictions, under the amendment of June 18, 1910, that the carriers do meet these rates. It is only by permission of the commission that they meet them; it is only when they apply for the permission that they are allowed to do so.

So that our situation is one where we often say our appeal is to the sea. Always that is our last appeal, and we have no doubt that in the future, when the ships return, that appeal will be successful, and then if the carriers do not choose, or are not permitted to meet that rate, we shall still enjoy the sea rates. We do desire, however, that no change be made in this law which shall result, as we think it must mathematically result, in the raising of our local and east-bound rates, as well as in depriving us of the full use of the trans-

continental rail carriers, which we find of great advantage to ourselves.

The amount of tonnage moving by rail west, we will say, is 3,000,000 tons, and the amount moving by sea 1,000,000 tons. If there were 49 ships in the service at a time, it would seem apparent that it is necessary that both the rail lines and the water lines should be used, in order to carry on this westbound transportation alone. Of course, we favor water lines, and, of course, we will particularly favor them as we have in the past and intend to in the future. Of course, we are anxious for the development of water transportation in every way, on rivers as well as on sea, and in every way possible to increase the transportation power of this country, as we need both forms of transportation. And it is in that view that we appear before these committees and that we appear before the Interstate Commerce Commission at all times. We think, however, that each should have its share, and each should do its proper work in that regard, and we think that the commission, the expert commission, is the proper body to decide upon the rail rates that shall determine those proportions.

In the course of this brief statement I would like to advert to some terms that have been used in this discussion, which, it seems to me, are not apt for the purposes that they are used. It often happens, in fact it is to a certain extent peculiar, that there arises in every science or profession or special line of work, a kind of special vocabulary; and one, after a while, becoming familiar with the lingo, if you please, uses it because it is a quick way of expressing a thought, and everyone ordinarily understands just what is meant. Now, for instance, take the word "violate," the carriers "violate" the fourth section. No one means by that word, "violate," that by force and arms they break the law. They do not break it, for the law carries pretty severe penalties. They really never depart from the law, except when permitted by the Interstate Commerce Commission, and under the sanction and protection of the law. Therefore the word, "violate," in that regard is an improper term, and does not express what it ordinarily expresses. A better word to use is "departure," or you may say "deviation" from the fourth section, because "departure" or "deviation" is a better term to carry out the idea that the departure or deviation is authorized, whereas violation would seem to indicate a deliberate breaking of the law, as that word is used quite commonly.

The CHAIRMAN. As a departure is authorized in the fourth section, it is not really a departure from the fourth section.

Mr. MANN. Well, it is a deviation from the absolute letter of the fourth section, by permission.

The CHAIRMAN. They have a certain provision, "Provided so and so," that takes in the fourth section.

Mr. MANN. I have always thought that the word "violation" is an unfortunate word in that regard, because it carries to some people the idea that the carriers are voluntarily breaking the law, which, of course, is not the case.

Now, I want to advert to the use of the word "competition" in this regard. Competition is used ordinarily as between two people that are trying to meet each other's bids or prices, or whatever it

may be, in order to obtain the result that both desire. It has been defined as the striving between or among two or more persons or organizations for the same object. That is sufficiently accurate to define the competitive relations of men in the common relations of life, but it is restricted in its application to carriers by the laws and statutes of the United States. In the so-called competition which is the basis of applications for relief from the strict provisions of the fourth section, one side is free while the other is bound by the discretionary action and permissive authority of the Interstate Commerce Commission.

In the case of the long line meeting the short line rates at common or competitive points, the short-line rates are primarily under the control of the short-line road. Its rates must comply with the strict provisions of the fourth section, and so it is not concerned with these provisions. Likewise the water carriers are free from these restrictions. Even if the Shipping Board shall exercise its power of fixing maximum rates by water, the water lines will still be as free as the short-line railroad, whose rates must, of course, comply with the rule of reasonableness. Indeed, the water lines via the canal, while the longer in actual mileage, are actually the short line when measured by traffic mileage. So that it has been said that New York by sea is nearer San Francisco in traffic mileage than is Pittsburgh, for example. Here traffic rates are translated into traffic mileage. The water carrier through the canal is therefore to all intents and purposes the short line between the two coasts.

Mr. HAMILTON. You mean that it takes less time to go by water?

Mr. MANN. No; it takes less money to bring 100 pounds of freight by water from New York to San Francisco than it does, on a graduated rate or mileage rate or any other kind of reasonable rate, from New York to San Francisco by rail.

Mr. HAMILTON. But it occurs to me that there may be occasions with California products where time would be very important.

Mr. MANN. Well, upon that point, after the Panama Canal was built, the steamships sailing from New York to San Francisco approximated so closely to the time of railroad transfer as to be substantially the same. The average time of a railroad car from New York to San Francisco, under normal conditions, is about 21 days.

Mr. SANDERS. What is the sailing time?

Mr. MANN. Twenty-two. They have made it in 22; they even made it in less time. They have rarely taken over 26.

Mr. SANDERS. The time is practically the same under normal conditions, is it not?

Mr. MANN. It might be said to be substantially similar.

Mr. SANDERS. But in anything like abnormal conditions the water route is infinitely faster than the rail route?

Mr. MANN. I beg your pardon?

Mr. SANDERS. I say, in anything like abnormal conditions on land the water route from San Francisco to New York, the Panama Canal being open, is infinitely faster than the rail route?

Mr. MANN. Of course.

Mr. SANDERS. I have known it to take 23 days recently for a car loaded in New York to get to Washington. That is hardly starting to go to San Francisco.

Mr. MANN. There are so many instances of that condition recently, Judge, that they are myriad in numbers.

Mr. HAMILTON. Before the Mexican difficulties did you use the Tehuantepec route?

Mr. MANN. Yes; that was the American-Hawaiian system reaching the Pacific coast, and they had substantially a monopoly of the very best line, because they had the exclusive use of the Tehuantepec Railroad.

Mr. HAMILTON. Will that shorten your time?

Mr. MANN. No.

Mr. HAMILTON. If your ships had used it, would it have shortened your time?

Mr. MANN. They did use it.

Mr. HAMILTON. Very well. Would it not have shortened your time to New York over the canal route?

Mr. MANN. No, sir.

Mr. HAMILTON. It would not?

Mr. MANN. No, sir; the canal route is much faster. There is one thing to consider there, too, Mr. Hamilton, and that is, by way of the Tehuantepec route there was an unloading westbound at the Atlantic coast and the loading of another steamer again at the Pacific coast, and then, eastbound, vice versa; so that you had four transfers.

Mr. HAMILTON. I appreciate that; but I thought perhaps you might speak of it.

Mr. MANN. That took time and cost money.

Mr. HAMILTON. I imagine there might be certain kinds of freight, if the time was actually shorter by that route, that you would prefer to break bulk with transshipment and use that route; but if it is not shorter, that answers the question.

Mr. MANN. I understand the fact to be that while the Tehuantepec system was the best up to that time, the canal system has far exceeded it in all kinds of service, not only in rapidity of service but in integrity of cargo, so to speak.

Mr. HAMILTON. Does the Hawaiian Steamship Line, or did it, still continue to use the Tehuantepec route, to the time of the Mexican difficulty?

Mr. MANN. Let me answer that in this way: The American-Hawaiian Steamship Co. used the canal as soon as it was ready for traffic and left the Tehuantepec line. I believe they were enabled to use the Tehuantepec line substantially up to the time that the Panama Canal was opened, but I would not be positively sure of that. I know that for some time they were interfered with, as far as the Mexican troubles were concerned. The Tehuantepec Peninsula is pretty far south. But they went immediately to the Panama Canal.

Mr. HAMILTON. The canal was the preferable route?

Mr. MANN. Oh, without question; so certainly so that there can be no argument on the point at all. The circumstance of being relieved of that double service of loading and unloading would have been sufficient in itself, but the time, as I understand it, was much faster by way of the canal, as well as, furthermore, that the cost of loading and unloading and the cost of transferring across the Tehuantepec Isthmus was saved by the movement through the Panama Canal, and the transfer across the Tehuantepec Railroad, under the

control of the American-Hawaiian Steamship Co. was one-third of the gross freight; so they saved that.

Mr. SANDERS. This is a hypothetical question, and I am putting it to the point you just made to Mr. Hamilton. I have heard it stated in regard to that Tehuantepec Railroad that if the passage through the Straits of Magellan could have been made the year around, through calm seas, that it would have been cheaper for the Hawaiian Co. to have carried those ships clean around the continent than to have transshipped their goods at the Tehuantepec Canal, but the danger of going through the Straits of Magellan kept them from doing it rather than the distance. Do you know anything about that?

Mr. MANN. No; I do not. That might be so. But, of course, it would take a much longer time around the South American—

Mr. SANDERS. It is not the time it would take to go around, but it is the dangers and the exposures.

Mr. HAMILTON. They could not transport any perishable stuff, of course, that way.

Mr. SANDERS. Why not?

Mr. HAMILTON. Because of the distance.

Mr. SANDERS. They can transport anything in refrigerator ships and refrigerator cars.

Mr. HAMILTON. Yes; I suppose so.

Mr. MANN. It is a fact, on that point, Mr. Hamilton, that the testimony of all of the experts in this case, particularly that of Mr. Jackson, the traffic manager of the American-Hawaiian Line, is that those ships can move any and all kinds of traffic, of any sort or character, with two exceptions, which they do not wish to take, and that is fresh fruit and vegetables and explosives. Now, then, under present conditions, with a refrigeration plant, they could, of course, take fresh fruits, if they desired to do so, and some shipments of that kind have actually been made.

Mr. HAMILTON. Is not the refrigeration charge a considerable charge?

Mr. MANN. I would not undertake to say about that. I do not know what it is. It is a considerable charge, no matter which way you move it, I suppose.

Mr. ESCH. Is it not the fact of the breakage and wastage of loading and unloading at Tehuantepec, in the case of this transfer at Tehuantepec, that causes them to use the other route? Is it not a loading and unloading question?

Mr. MANN. Yes; one-third of the total freight rate they had to pay to the Tehuantepec Railroad for the use of their road. Thus, you see, on a \$9 rate, which was charged on steel and steel products over the Tehuantepec route, which would be 45 cents per 100 pounds, if you take away from that one-third, which is what they had to pay the railroad, you have \$6 left, and \$6 a ton makes a 30-cent rate, which the American-Hawaiian Steamship Co. put in as soon as the canal was opened. We claim they were making as much on that 30-cent rate as they were practically on the \$9 rate, because they were getting just as many dollars into their pockets as they did before.

The CHAIRMAN. But they had to pay something out for going through the canal.

Mr. MANN. Yes, sir; and that is compensated for in the cost of loading and unloading, which amounts to about \$1 a ton.

The CHAIRMAN. It was much cheaper than that. We had Mr. Jackson before us when we were considering the Panama Canal tolls question.

Mr. MANN. And the tolls, as added, are balanced by the additional cost of loading and unloading which they had to pay, which amounted to about \$1 a ton.

The CHAIRMAN. Which enabled them practically to save the railroad charge at Tehuantepec?

Mr. MANN. Yes, sir; it made the 30-cent rate which they were receiving as compensatory to them as the 45-cent rate, on which they carried before.

The CHAIRMAN. The shippers also profited in not having their cargo broken and damaged.

Mr. MANN. There is no question about that. The cargo comes in excellent shape now. It is loaded carefully and properly in New York City, and then, when it comes to San Francisco, it is in the same shape as it was before, whereas the loading and unloading at the Tehuantepec Isthmus always broke the cargo and distributed it in the wrong way and brought it in a very unsatisfactory condition into the port of destination.

Mr. SANDERS. What do seafaring men call it—the integrity of cargo?

Mr. MANN. I can not say that that is a seafaring word. That is the word that came to my mind as I expressed it.

Mr. SANDERS. What is the commercial word for it?

The CHAIRMAN. Without breaking bulk is what they usually say.

Mr. MANN. Without breaking bulk is what they say. Shall I continue again?

The CHAIRMAN. Proceed.

Mr. MANN. I say, then, that the water carriers through the canal constitute, therefore, to all intents and purposes, the short line between the two coasts.

So this kind of competition, as it has come to be called, is not competition in the usual sense of the word, since under our laws as they stand at present not both but only one of the parties is free. The long line, whether it is a transcontinental line confronted with lower water rates to the farther distant point or a rail line reaching a point served by a shorter rail line, must obtain the fourth-section order and permission of the commission before it can meet the lower rate at the common point. So under present conditions and present laws the word "competition" does not accurately fit the conditions. Permissive rates rather than competitive rates describes the situation a little better.

As far as the water rates are concerned, we are satisfied with what we consider will be the sea level of rates, and by the sea level of rates we mean those rates for water transportation which are brought about by natural and untrameled competition between water carriers. As to combinations and monopolies, we think that the present wise laws of Congress sufficiently cover that situation. It was, it seems to me, *ex industria* imported into the Panama Canal act that the provisions of the Sherman Antitrust Act should apply to the shipping

through the Panama Canal. It was also provided in that wise statute that the railroad owned or controlled vessel should not under any circumstances or conditions be permitted to operate through this canal.

The CHAIRMAN. In competition with themselves?

Mr. MANN. Yes; in competition with themselves.

The CHAIRMAN. But only such as would be in competition?

Mr. MANN. That is entirely satisfactory, plainly, for the purpose of keeping that competition through the canal free from interference in any way, shape, or form by the great transcontinental railroads of the country and keeping it free and open to the competition of ships privately owned, as distinguished from railroad ownership.

Now, then, under those conditions, we are satisfied that what we have called the sea level of rates will ultimately result, and that sea level of rates will be brought about, irrespective of the railroads, or of what the railroads do, or how much traffic they carry, or at what rates they carry it, by the competition of the ships themselves and among themselves, inasmuch as the highway of the sea can not be monopolized. You do not have to lay tracks or invest three or four hundreds of millions of dollars in a right of way, with tracks and ties and grading and equipment and the rest of it. Anyone who has a comparatively small sum of money can build or own or charter a ship and take a cargo through the canal from New York to San Francisco or back again, and under those conditions, with freedom of operation and freedom of conditions and freedom of commerce, we are satisfied that the sea level of rates, which must obtain under this freedom, as between the New York and San Francisco shores, will be all that will be requisite and all that the natural advantages which are enjoyed by these coast cities properly reflect as far as sea rates are concerned.

Mr. HAMILTON. That is speaking for yourself and not having relation to the interests of the people living away from the coasts in the interior who desire to get to the Pacific coast markets?

Mr. MANN. Yes, sir. That is met and was explained yesterday by the policy of the carriers, which has been indorsed by the Interstate Commerce Commission, of allowing the cities of the great Central West to indulge in this coast business at the same rates which are given to the Atlantic coast, and that is permissible under this statute which authorizes those conditions to be met by the Interstate Commerce Commission in exceptional cases. Under a rigid fourth section, as Mr. Barlow said yesterday, it follows as the night the day that New York and the Atlantic coast will do the business of the Pacific coast and the Central West will be confined to its own immediate territory. That must follow.

Now, then, as to exceptional cases under the fourth section, the chairman mentioned the other day that, in his mind, the word "exceptional" goes—

The CHAIRMAN. No; special cases.

Mr. MANN. Special cases, I should say, involved the idea of temporariness; that a special case should be a temporary case. I want to say that it seems to me that a special case merely means a case that is different from a general case, and that a special case may be just as permanent as a general case, and the illustration that has come

into my mind is the case of the unfortunate individual who has lost a leg. Now, his is a special case as compared with the general case, because most human beings have two legs, and he, as a special case, has but one, but it is very permanent and will last as long as he lives.

So there is your situation with respect to this competition. It is just as permanent as any conditions are permanent, and if we have no more European wars—and God grant that at the end of this it will be settled forever—we shall return to normal conditions, water transportation and water competition. The long lines meeting the short-line haul will be permanent conditions and they will be special cases, different from the general cases.

Now, with the permission of the committee, I want to read a brief extract from one who may be called the father of railroad transportation textbook writers, and that is Prof. Arthur Twining Hadley, who is now president of Yale University. Some 30 years ago he wrote a book on railroad transportation, which is at present, as it has always been, looked upon as an authority upon that subject. At page 114 of that book he makes this statement:

Where a railroad is the only means of conveyance, it can charge what the traffic will bear without restraint. But where it comes into competition with a water route or with another railroad its charges are brought down to the lowest possible figure. The points where there is no competition are made to pay the fixed charges, while the rates for competitive business will little more than pay train and station expenses. It is better to have business on those terms than to have it go by the rival route. * * *

Where one place has the benefit of water competition and another has not, it is hard to devise any effective means of getting rid of the differences.

We are apt to think that because these local discriminations are an evil it must be the fault of somebody. In our anxiety to get rid of the evil we are apt to overlook the natural causes which led to it, and which sometimes must lead to it almost of necessity. That local discriminations are a most serious evil, no one can doubt. That they are exaggerated, and in many instances flagrantly exaggerated, by the shortsighted policy of the railroad managers is equally certain. But there are many instances where the railroads are not responsible for them and where it is worse than useless to try to prohibit them by law. We are not arguing in favor of this system, but against the popular remedy—a statute.

Suppose it is a question whether a road can be built through a country district lying between two large cities which have the benefit of water communication while the intervening district has not. The rate between these points must be made low to meet water competition; so low that if it were applied to the whole business of the road it would make it quite unprofitable. On the other hand, the local business at intermediate points is so small that this alone can not support the road, no matter how low or how high the rates are made. In other words, in order to live at all the road must secure two different things—the high rates for its local traffic and the large traffic of the through points, which can only be attracted by low rates. If they are to have the road they must have discrimination.

On page 118 Mr. Hadley refers to the history of the Granger legislation and the results to be learned from that period of railroad history. In Wisconsin a law was passed during that time called the Potter law, which attempted to make the rates per mile for local points nearly the same as they had been for competing points; in other words, to reduce the intermediate rates to the level of the terminal rates. He says that the result was disastrous. The old roads struggled on as best they might, losing money all the time; but no new ones were built, and the local points could not get the service they needed. They suffered severely. After two years' trial the law was repealed.

On page 135, speaking again of the Granger legislation and the Potter law, he states that whereas the railroads found it impossible to cause these laws to be repealed or to break them before the courts, the economic laws, or the laws of trade forced their repeal. He states:

The law reducing railroad rates to the basis which competitive points enjoyed, left nothing to pay fixed charges. In the second year of its operation no Wisconsin road paid a dividend; only four paid interest on their bonds. Railroad construction had come to a standstill. Even the facilities on existing roads could not be kept up. Foreign capital refused to invest in Wisconsin; the development of the State was sharply checked; the very men who had most favored the law found themselves heavy losers. These points were plain to everyone. They formed the theme of the governor's message at the beginning of 1876. The very men who passed the law in 1874 hurriedly repealed it after two years' trial. In other States the laws either were repealed, as in Iowa, or were sparingly and cautiously enforced. By the time the Supreme Court published the Granger decisions the fight had been settled, not by constitutional limitations but by industrial ones.

Mr. SNOOK. What is the title of that?

Mr. MANN. Hadley on Railroad Transportation, the president of Yale University.

Now, this, it seems to me, also should be said. I at first had phrased it in my own mind in this way, that the real truth ought to come out, but I will change that into this form, that the subdominant idea of the intermountain people is that they are entitled to ultimately receive the sea competitive rates which have been permitted at the coast cities, and their argument is calculated to that point, and is made from that point of view. It is a very dominant, though a subdominant, idea, we think. Take, for instance, their illustration of it having cost \$58,000 more to build a bridge, because of the rates that they had to pay on steel. \$58,000 more than what? \$58,000 more than the rates to the coast, the existing rates to the coast at that time, so that their inference is that if they had had the same rates as the coast had—in other words, if the intermountain points had had sea competitive rates, had been by force of something put upon the sea so as to have sea competitive rates—they would not have been obliged to pay that \$58,000. Accordingly, it was a loss. Now, it could not have been a loss unless they were entitled to the coast competitive rates.

Then, again, you hear them say that they presented to the commission statements showing that the carload earnings of the railroads on these terminal rates and the ton per mile earnings on these terminal rates, if those rates were applied at these intermountain points, which are 250 or 400 miles nearer the point of origin of the freight, would produce to the railroads amply compensatory rates, and therefore that these terminal rates to the coast should be applied to intermountain points.

Now, then, unfortunately for them, the Interstate Commerce Commission does not agree with the intermountain points in that particular. It is true that they have presented those figures to the Interstate Commerce Commission; it is true that during all these years the Interstate Commerce Commission has examined very carefully and most particularly into this condition of circumstances, and has constantly and consistently found that the rates to the intermountain

points, as established by the commission, are fair and just and proper, and, conversely, that the intermountain points are not entitled, on the basis of reasonableness, to the rates made to the coast in competition with the sea.

So that at every point of their argument, if you will weigh this sub-dominant idea which is in their minds all the time, you will find that it is not the obtaining of the same level of rates as are made to the coast that they are so much interested in as it is in some way getting the terminal rates applied at the intermountain points. On that basis their argument will hang consistently, and it will not hang together consistently on any other hypothesis.

How surprising it is to find these intermountain gentlemen coming here together with their assistant, the representative of the water carriers, and asking Congress to pass a long-and-short-haul law in order to encourage the American merchant marine. There were 49 ships sailing through the Panama Canal at its highest degree of efficiency. If there had been a hundred, or twice as many, how would that have increased to any appreciable extent the American merchant marine? Prior to the war England had 4,000 ships and Germany 2,000 engaged in over-sea commerce, while the United States had but 12. But how interesting it is, and how touching, to observe the solicitude of the intermountain points about the water competition at the coasts. It is only explainable under one theory: They want the ships invited back to the coasts because they believe, although they do not tell you so, that the carriers will find this transcontinental business to the coasts so profitable that they will continue to meet the water competition and depress all of the rates in the United States within transcontinental territory to a point necessary to meet the water competition at the coasts; and that they will as the carriers have told you would be required under a rigid law, cut the rates, which means reduce the rates, all the way back to the Missouri River to St. Paul and even beyond. I think it is a very easily understood mathematical proposition, without going into the details involved, that the carriers can not afford to do that. The intermountain points think they can. The intermountain points want the ships to come back and want the railroads to make low rates to the coasts because they believe they will not give up the business, but will depress the westbound rates from points east to the Missouri River and all points west in order to hold this business to the coasts under a rigid law, and thus the intermountain points will get the terminal rates. That is the sub-dominant thought of these people.

I say it is a policy which it is impossible to carry out. There is not any statute that can be enacted by Congress, or by any legislative body, or any law that can be enunciated by the Supreme Court of the United States, that could bring about any such condition of affairs; and therefore the ideal that is behind the contention of the intermountain points is absolutely incapable of realization. In other words, if the intermountain points were right and the rates to the coast would be reasonable if applied at the intermountain points, then they do not need the fourth section, because on the hypothesis that the rates to the coast are reasonable in and of themselves if applied at the intermountain points the Interstate Commerce Commission has full authority to put them into effect at the intermountain points and no change need be made in the fourth section. But if they are not

right, and the commission is right in not applying the terminal rates at the intermountain points on the basis of the reasonable rates, then such a provision as the long and short haul clause will be of no value to them, because the freight will move by sea under normal conditions and the low rates to the coast will be enjoyed by the coast cities not withstanding a rigid fourth section. That, I think is the essential fallacy of their position. The fact is the intermountain points, and the intermediate points all over the United States, wherever they are situated, whether in the southeast or in the official classification territory, or in Central Association territory, or Texas, or Kansas, or Missouri, or anywhere else, cannot possibly be injured by the wise permission being granted to rail carriers to meet either rail or water competition at the common competitive points, because the freight is going to reach the common competitive points at the low rates anyhow, whether you pass that rigid long-and-short-haul clause or not. A short line will take it there at a reasonable rate just as it does now, and the sea will take it from the Atlantic coast to the Pacific coast whether you have a rigid long-and-short-haul clause or not.

Therefore, what possible difference can it make to the intermediate points if some circuitous line or if these transcontinental roads carry some of this freight through their towns to a point beyond at a rate at which it is going to reach there anyhow? It is plain to me that the only thing that can possibly be accomplished by such legislation as this is the bringing about of injury to the more distant points, which will thus be deprived of this service rendered by the circuitous carriers or the transcontinental carrier without any resulting advantage to the intermediate points, and in addition thereto the throwing into inextricable confusion, and I think one may use the expression inextricable confusion, of all the rate structures and rate fabrics extending all over the United States.

As to encouragement to water competition, the water carriers, it seems to me, have nothing to fear under the present act. In the last decision of the Interstate Commerce Commission on this point, reported in 46 Interstate Commerce Commission Reports, pages 276 and 277, speaking of the attitude that the carriers might assume before the commission when water competition returned, the commission says that the carriers must "submit competent proof upon these applications of a fairly regular water service between the two coasts."

In other words, they can get no relief; no permissible departure from the fourth section will be granted because of tramp steamers, or because of an occasional sailing through the Panama Canal; there must be regular water service between the two coasts. They must "show the adaptability of the traffic to water competition," which means that they must take up the proposition on each particular item of tariff and show that it may move by and is adaptable to the sea. If it is not, they are not permitted to do that; if it is, they will be permitted to do so when circumstances will allow it. That means, not a schedule as a whole but each item of it, whatever it may be—iron, steel, bedsteads, desks, or boots, or shoes. They must show the principal points of origin of this traffic and the range of rates afforded by the water lines, and the rates they have to meet. They must show the principal point of consumption of this freight and

the ports upon the two seaboard at which the water carriers receive and deliver the freight.

At the end of the next paragraph the commission said:

Neither is it our purpose to permit the maintenance of rates to or from the Pacific coast points at a level that will render this service unattractive to the boat lines.

I say, as the law now stands and as it has been enunciated by the administrative body which you have created the Interstate Commerce Commission, the boat lines have nothing to fear. So that this is the way the matter filters through my mind—an absolute fourth section can do nothing more than create incalculable harm throughout the whole United States, without rendering any assistance to anyone.

That is all I have to say.

Mr. SNOOK. What is the date of the decision you read of the Interstate Commerce Commission?

Mr. MANN. It is a recent decision—June, 1917.

Mr. SNOOK. You have been present throughout the hearings and heard the other decision that has been read several times by men on the stand, in which the Interstate Commerce Commission makes reference to taking into account the potential water power. Do you think this changes that ruling of the Interstate Commerce Commission or puts into effect a new ruling on that question?

Mr. MANN. I think that refers to the water competition between the coasts.

Mr. SNOOK. It just refers to the Panama Canal?

Mr. MANN. To the Panama Canal.

Mr. SNOOK. It has nothing whatever to do with river competition?

Mr. MANN. No; I do not think it has. But I would like to say with respect to that river competition that we most vigorously urged with all the power at our command in these last hearings before the Interstate Commerce Commission that it was their duty to recognize the potentiality of the canal, just the same as they recognized the potentiality of the Mississippi River in these southeastern cases, but the commission did not agree with us. They said the ships had gone away from there, and they would not allow us to retain our rates on the basis of potentiality.

Mr. SNOOK. In this decision from which you have just read the commission speaks about it being necessary to show that the facilities are at hand to carry the freight. These other decisions, speaking of the river traffic, seem to adopt a different rule. There they take into account the question of whether there is a potential power.

Mr. MANN. If I were to endeavor to interpret the idea of the commission as to the difference between the situation on the river and the situation on the canal, I would say this: That as far as the canal is concerned the ships have entirely gone.

Mr. SNOOK. You mean on the rivers?

Mr. MANN. No; the ships sailing through the canal have entirely departed, and there is no telling when they will return. But the water is there. With respect to the Mississippi River, the water is there and so are the ships; so that that second proposition is true in the case of the Mississippi River and not true in the case of the canal. I think that it is upon that difference that the commission makes potentiality in one case effective and claims that there is no existing present potentiality in the other case. Also I might say that

in that southeastern case they did not recognize the potentiality to the extent that it was claimed by many of the carriers.

Mr. SANDERS. I would like to ask one question in regard to rivers, with respect to which there is a doubt in my mind. Of course you are thoroughly familiar with that Grand Junction case that has been quoted here?

Mr. MANN. I would not undertake to say that I am in every way. I know of it in a general way, but I can not say I am familiar with all the details of that territory.

Mr. SANDERS. Do you know any pronouncement of the commission since that date that would lead us to believe that the commission has in any way changed its view as to the potentiality of competition by dream or phantom boats that existed nowhere except in the imagination of the railroad managers?

Mr. MANN. I do not think the commission were concerned with dream or phantom boats with respect to their potentiality on the river, but were concerned only with actual, existing boats; in other words, it was a competition which Mr. Lollier very properly said had existed, and the water was there and the means of operating on the water were there.

Mr. SANDERS. And that proposition supposes the fact that the boats are there?

Mr. MANN. Yes, sir.

Mr. SANDERS. I would like for you or the commission to point them out for me.

Mr. MANN. I would like to take a trip to the river. I understand there are some.

Mr. SANDERS. No; there are not. A boat on the Mississippi River to-day is *rara avis*.

The CHAIRMAN. There are no through boats?

Mr. SANDERS. No through boats; there are a few local boats; and when one comes down the river the whole population quits work to look at it.

Mr. MANN. We were very much concerned that the commission did not recognize potentiality as far as the canal was concerned, while recognizing it on the Mississippi River.

Mr. SANDERS. The thing I can not understand, and the reason why I asked you as to the decision, is, since the boats have disappeared completely from the Mississippi River and its tributaries as have the boats from the canal, why should there be two methods of interpreting the fourth section?

Mr. MANN. I do not think there are and, as I say, my information is that these situations are different in that particular. In other words, there are boats there and some of them are in operation, though perhaps not on through routes from St. Louis clear down to New Orleans, but between intervening points.

Mr. SANDERS. There are no boats running from St. Louis to New Orleans or from Memphis to New Orleans. There are a few local boats from New Orleans to Baton Rouge and a few boats on the west in the Bayou La Fourche, in the La Fourche country, but there are very few. The boat as a means of transportation has as completely disappeared from the Mississippi River as it has from the Panama Canal.

Mr. MANN. I think it ought also to be said in behalf of the commission, in connection with this potential water competition, that naturally they carry in mind and are controlled by the decisions of the United States Supreme Court; and that in the Alabama-Midland case, decided a good many years ago and reported in 168 United States Reports, the United States Supreme Court recognized the potentiality of water as a circumstance and condition justifying a lower rate between the two points where such potentiality existed.

Mr. SANDERS. You are not antagonistic in any way to water transportation?

Mr. MANN. No, sir; highly favorable to it.

Mr. SANDERS. Do you think rail and water are the two arms of the Government?

Mr. MANN. Certainly.

Mr. SANDERS. The right and left arms; and both ought to be useful, and neither ought to be destroyed?

Mr. MANN. Undoubtedly, and that is why I differ with the witness who will follow me, who wants to get 100 per cent for his water lines. I think it is just as unfair to give all the business to the water lines as it is to give it all to the railroads.

Mr. SANDERS. You believe that both rail and water ought to be co-ordinated and used?

Mr. MANN. Not only ought to be, but I believe they are both absolutely necessary for the transportation requirements of the United States.

Mr. SANDERS. So do I. I am glad to hear you say so.

Mr. HAMILTON. Mr. Chairman, are we going to hear from any of the members of the Interstate Commerce Commission?

The CHAIRMAN. I think so. I would be pleased to have any member of the committee question anyone they desire to have come before the committee.

Mr. SANDERS. If the commission is going to interpret the laws as I think they could and should be interpreted, I do not think the laws will need any amendment; if they are not going to interpret them as I think they should be interpreted, then I think the laws ought to be amended. So I would like to have at least one of the commissioners appear before us.

The CHAIRMAN. It has been suggested that Commissioner Clark would be a very illuminating witness on the subject, and so we can have Commissioner Clark or any other commissioner, so far as that is concerned, before we finish this hearing.

Mr. ESCH. In your opinion, Mr. Mann, are the present rates just and reasonable?

Mr. MANN. You mean the rates that have applied since March, 1915?

Mr. ESCH. Yes; and as compared with those before that time.

Mr. MANN. They are very much higher than those before, and I am not prepared to say that they are just and reasonable or that they are not higher than just and reasonable rates. Of course we must remember the conditions existing at the present time involve a greatly increased expense of operation in the case of the railroads. It probably is too soon to say as to whether those rates are too high or not, but if the increase in the income of the carriers which must result from the advance combined with an increase in traffic gives them a heavier

net income than they are entitled to, then that of itself will be evidence of the fact that the rate structure, taken as a whole and covering this territory in the far West, is too high.

Mr. ESCH. I suppose that is stated in the recent decision of the commission as to advances on transcontinental lines?

Mr. MANN. No, sir; that was confined to official classification territory. I do not know whether an increase was denied as to western territory and granted on some roads as to official classification territory, but a recent decision has been made granting further advances to eastern classification territory. The western carriers had an additional application pending before the commission, which was continued indefinitely and has not been heard, and I do not know whether it will be heard.

Mr. ESCH. When the Panama Canal was fully operative and lines were passing through it, did those lines from the coast absorb the rates from the interior?

Mr. MANN. You say, after the Panama Canal was opened?

Mr. ESCH. Yes; when they began running through it.

Mr. MANN. At the opening of the Panama Canal they ceased all such absorptions, and that was the principal basis of the decision of the Interstate Commerce Commission that the sea competitive rates of the carriers could no longer apply to the interior points, inasmuch as the water carriers had ceased to absorb those interior rates.

The CHAIRMAN. While we have had some very able men speak on this question, I do not think any man has made it plainer than you have; but there is a question involved which is not local and which ought not to be considered from the standpoint altogether of localities. Now I can understand very readily why the privately built railroads and privately owned railroads with a longer route should be permitted to participate in the traffic with some profit; but practically every river is an arm of the sea, as far as transportation is concerned, no matter whether it is salt or fresh water, because all rivers flow to the sea.

Mr. MANN. Except those in Nevada, which go into a sink.

The CHAIRMAN. I suppose you mean Salt Lake, and that is an inland sea. Now, the Government is continually improving river navigation at public expense, is continually improving harbors at public expense, and the common taxpayer pays for all the improvements. The Panama Canal was such an undertaking, and it was built from the taxation of the public, and the public is obliged to pay for it, no matter whether the canal pays a cent in return or not. Now, at the start, over the strenuous objection of some of us, the coastwise shipping of the United States was put through absolutely free. The Pacific ports, your own city and others, receive an actual, substantial, permanent, benefit from this investment of public money in the Panama Canal. This benefit may be interrupted temporarily, but it is permanent so far as the canal is concerned. The railroads immediately filed application for rates which would enable them to meet this competition brought about by public taxation by the building of the Panama Canal, and they were granted that protection, as I understand. That competition has been temporarily interrupted by the war, but when the war has ended, presumably the former condi-

tions will prevail, and the railroads will seek a rate which will enable them to make some net profit. What do you think of the public policy of taxing all the people for improving rivers, even creating them sometimes in cases where none exist, so that some portions of the country will get a direct substantial benefit over other portions of the country; and those latter portions of the country and the taxpayers who are taxed to create such special facilities are denied any of the benefits of these special Government-provided facilities?

Mr. MANN. Well, Judge, the answer to that might almost take the form of an essay.

The CHAIRMAN. As the question did?

Mr. MANN. No, sir; I did not mean that.

The CHAIRMAN. I am asking as to the Government adopting such a policy. Why should not the Government build a railroad from New York to San Francisco and not operate a train on it, but create potential rail competition that would force down the rates of the existing railroads, which latter would continue to do the business? Such a Government railroad, without a car on it, would have the effect of reducing rates without furnishing actual transportation competition.

Mr. MANN. Well, I would say, in the first place, as it comes to my mind, that the Panama Canal was not built primarily for the purpose of enabling ships to operate from New York to California.

The CHAIRMAN. It never would have been built if that had not been one of the objects.

Mr. MANN. The Panama Canal was built as a great world undertaking to connect ocean with ocean and to enable the United States to reach all the ports of the world in the most convenient manner, and then, even on a broader basis, to establish a new line of transportation between other countries which did not bring any particular business to the United States. That was the great purpose of the Panama Canal.

Incidentally it offered a means of transportation between the Pacific and Atlantic coasts, but that incident was, as far as tonnage is concerned, as far as ships are concerned, as far as the movement of the traffic or the business of the world is concerned, was a very small part, and really of very small moment. The fact of the matter is, according to the official reports given out by the Government concerning the Panama Canal, that the tonnage moving through the Panama Canal to-day is just as great as it ever was, and even greater. Of course the ships are not going between New York and San Francisco, but they are going through the canal from Japan and the Orient, from Europe, and from the east coast of the United States, and the canal is a very busy institution right now, although the coastwise business has been, you may say, entirely withdrawn.

As far as the competitive feature of the situation which you speak of is concerned, I might refer you to a message of President Taft to Congress, upon which Congress acted in connection with the Panama Canal bill and the voting of appropriations, in which he said, among other things, that the canal was to be built for the purpose of offering a means of competition as against the railroads transcontinentally operating from New York to San Francisco, from the Atlantic coast to the Pacific coast. So that we may say that one

of the purposes of the building of the Panama Canal was to establish a means of competition.

The CHAIRMAN. Absolutely.

Mr. MANN. One of the large and controlling justifications for the expenditure of the public moneys in the improvement of waterways and harbors is the encouragement not only of transportation by water, but of competition with rail carriers who operate between the same points that the water serves. The Interstate Commerce Commission—and I can not say that I entirely agree with them in this regard—have taken that into consideration in adjudicating these transcontinental rates and have given to these intermountain points actually lower rates than the Interstate Commerce Commission found they would otherwise be entitled to because of this water transportation through the Panama Canal. Or, in other words, they tied the rates of the intermountain points up to the coast rates in one bundle, so that as the coast rates went down the intermountain rates would go down, and as the coast rates went up the intermountain rates would go up. To that extent they put these intermountain points within the influence of the Panama Canal. You understand why and how they did it in this 7, 15, and 25 per cent proposition, because if the rate went up at the coast it would go up at the intermountain points, and the intermountain points could not be required to pay more than 107 per cent of the coast rate from Chicago, and if the rate went down from Chicago the rate on the intermountain points would go down by exactly the same measure of percentages, because the intermountain points could not be required under any conditions to pay more than 107 per cent of the contemporaneous coast rate—that was the expression Commissioner Lane used, the contemporaneous coast rate—from Chicago to the intermountain points. So I say they tied the rates to the coast rates, and I think they have repented of the knot that they tied.

The CHAIRMAN. Still I do not see that I am getting an answer as to the national public policy of taxing the whole people for the special benefit of a few.

Mr. MANN. Well, Judge, I will answer that a little further in this way: As the rates from New York to the coast were reduced in order to meet the Panama competition, the rates from Chicago were reduced, the rates from St. Paul, the rates from the whole Central West, were reduced to the coast rates. So the Panama Canal had an immediate and direct effect, and as immediate and direct an effect upon the rates to the coast cities from the great Central West as it did upon the rates from the Atlantic coast.

The CHAIRMAN. I will ask the question in another way: The railroads are privately owned and operated, but their rates are controlled by law, by the Government. The law is supposed to give them a reasonable rate and no more. Now, is it good Government policy to tax the whole people with the view, intention, and purpose of forcing these private companies, or at least some of them, to do business at less than a fair return upon their capital? I mean is it right for the Government to tax the whole public in order to keep some of the carriers from receiving that which the Government says they are entitled to?

Mr. MANN. Of course, if that were the effect it would be unjust; but it is not the effect.

The CHAIRMAN. But you just said President Taft cited that as one of the reasons for building the Panama Canal, to reduce the intermountain rates; and that at that very moment those intermountain rates were controlled by the laws of the United States and the several States.

Mr. MANN. Yes; transcontinental rates.

The CHAIRMAN. Is it a good policy, is it one that ought to be encouraged, to take the money by taxation from all the people in order to force the private owners who are serving the public for a reasonable return, and for nothing more than a reasonable return, that return being regulated by law, in order to reduce the rates?

Mr. MANN. I think the railroads would agree with you that the waterways should never be improved.

The CHAIRMAN. They did everything they could to keep the Government from building the Panama Canal.

Mr. MANN. Of course they did.

The CHAIRMAN. If the Panama Canal had not brought these two coasts together it would not have been built.

Mr. MANN. The railroads opposed it all the time. They have no interest whatsoever in the improvement of any water transportation, because they know the necessary result must be to bring about a competitive situation, since water service is less than rail service; but I do not think the United States Government nor the people of the United States would refrain from improving the waterways simply because the railroads would object to the increased water service and the reduction of rates.

The CHAIRMAN. But it forces these carriers to do business for less than the laws of the States and of the Nation say they are entitled to in order to operate their lines, and it necessarily and logically must force them to charge more than they otherwise would have charged on the remaining part of their business.

Mr. MANN. My reply to that is that it is the law of nature, the law of economics, and it has been the law of transportation ever since transportation was thought of. Some one told me that there was competition in the Sahara desert.

The CHAIRMAN. Competition coming from private enterprises?

Mr. MANN. No; natural competition.

The CHAIRMAN. The Suez Canal is a private corporation and of great world benefit, but the Panama Canal was built chiefly for the benefit of our own country. Yet we are now permitting rates to be made by the railroads by which the very object and purpose of building it, namely, serving the people of the United States, is to be nullified at the expense of the taxpayer. Such laws as these, I think, are forcing this country to public ownership. It is not because of dreamers or theorist but because of such laws and regulations. The railroads are subject to the regulation of 48 different States, which in part determine how they shall do their business, and by public taxation we create a potential and not a real reason or cause that requires them to carry on some of the business of the country at less than the freight rate that the Congress of the United States, through the Interstate Commerce Commission, has provided for them, and there is no limitation whatever except confiscation.

Mr. MANN. The fundamental proposition there is that each community is entitled to its natural advantages, and they should not

be interfered with. If the building of the Panama Canal has increased the natural advantages of some States you may ask why that should be done by the people of the whole United States. My answer is that the great mass of the people of the United States, more than 75 per cent of them, have been distinctly benefited by the building of the Panama Canal, and few, if any, have been injured by it, whereas the whole world has been improved by the building of that canal, just as it was by the building of the Suez Canal.

The CHAIRMAN. San Francisco and the other Pacific ports had natural advantages before the Panama Canal was built. The canal is not a natural advantage; it is an artificial advantage created by the investment of capital furnished by the taxpayers of the United States. As you say, only those who are within reach of these special benefits receive a return for that taxation.

Mr. MANN. Oh, no. I say the whole people of the United States enjoy that benefit, the people of the whole Central West, and New York and the Atlantic coast, who constitute more than 75 per cent of the population.

The CHAIRMAN. I see no difference in building a canal to force the railroads to reduce their rates and building a Government railroad for the same purpose.

Mr. MANN. I did not suppose anyone would think the Panama Canal was built for the purpose of making the Southern Pacific lower its rates from New York.

The CHAIRMAN. There is no doubt that the reduction of railroad rates had a great deal to do with the building of the canal. Whatever facilities are created by public taxation should, as far as possible, be of benefit to the whole public without any restrictions whatever.

Mr. MANN. You do not mean that public taxation results in the same benefit to everybody?

The CHAIRMAN. Maybe not to everybody.

Are there any further questions? If not, we will take a recess until 2 o'clock.

I may say, Mr. Mann, that your statement has been of great benefit to the committee.

Mr. MANN. Thank you. I would like to say that your examination is always extremely pleasant to me.

(Thereupon, at 12.30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m., pursuant to recess.

The CHAIRMAN. The committee will come to order. Mr. Wettrick, you may proceed in your own way.

STATEMENT OF MR. S. J. WETTRICK, OF SEATTLE, WASH.

Mr. WETTRICK. Mr. Chairman and members of the committee. I am the attorney and manager of the transportation bureau of the Seattle Chamber of Commerce and Commercial Club which is the organization in Seattle that looks after that city and community's commercial and industrial interests, and those are the interests in

whose behalf I appear here. In fact, I might say that the interests of the entire Northwest—at least that part west of the Cascade Mountains—are exactly the same as that of the city of Seattle, so that in a sense I represent all of those interests.

The subject that is before this committee has really been covered so fully that it would be but repetition, I feel, to prolong the discussion from the standpoint of those who are opposed to the proposed law. The intention at the beginning of the hearings before this committee was to conserve as much time as possible, and in accordance with that it was agreed that such statements as anyone appearing here had made before, as were regarded germane to the subject, might be incorporated here, and that time could be saved in that way. Any general statement that I might make to this committee by way of introducing what I have already said would be but repetition of what Mr. Mann from San Francisco stated so thoroughly and I think so well this morning. So if it is perfectly understood that I thoroughly concur in those views, and that if I were to go all over the subject again it would be to express those ideas which have been expressed from the standpoint of the Pacific coast cities—and in a general way the question is the same everywhere, and the principle involved is the same everywhere—I will content myself with simply asking this committee to permit me to incorporate the statement which I made before the Senate subcommittee.

The CHAIRMAN. You have that permission, as all others do. You can incorporate all of it or any part of it, just as you wish.

Mr. WETTRICK. And that, of course, is not yet available.

The CHAIRMAN. I mean when available. Your statement will not be printed until you present that part of it or send it to the clerk of the committee, and then it will be printed as one statement, consecutively.

Mr. WETTRICK. I would also like to say that Mr. J. W. McCune, representing the commercial interests of Tacoma, appeared before the Senate subcommittee, and he could not wait for these hearings and has returned. His statement there was brief, and it presents the views of shippers in the city of Tacoma, and he asked me to make the request of this committee that his statement be likewise incorporated in this hearing.

The CHAIRMAN. As though he had appeared before the committee?

Mr. WETTRICK. Yes.

The CHAIRMAN. That may be done then.

Mr. WETTRICK. Now, if I should start at all to discuss anything, as I said, I would simply be repeating, and the first thing I know I might be getting into it so far that we would be uselessly taking up the time, and for that reason I am going to let the statement which I made before the Senate subcommittee stand as my statement before this committee.

Mr. ESCH. Is there any phase of the pending question that was contained in your testimony before the joint committee at San Francisco last fall that you would like to incorporate in your hearing now? Or have you practically covered all of that in your testimony before the Senate subcommittee?

Mr. WETTRICK. I think I covered the subject perhaps more fully before the Senate subcommittee than I did in San Francisco. There are some things in that statement that I did not cover in my state-

ment before the subcommittee, but they were matters which had been covered before the Senate subcommittee before I had an opportunity to make my statement, and I did not care to repeat them. For instance, you will remember, Mr. Esch, that I quoted to a considerable extent from the decisions of the Interstate Commerce Commission and from various writers on this subject, to show that all experts agree that the principle of the present long and short haul clause is correct. A part of that, particularly what Judge Noyes has had to say on the subject, was included in Mr. Spence's statement, so that what will go into the record that is being made before this committee in one form or another covers everything that I said before the committee in San Francisco.

Mr. Esch. Very well; if that covers it.

The CHAIRMAN. Are there any other members of the committee that desire to ask Mr. Wettrick any questions? If not, we are very much obliged to you, Mr. Wettrick.

The statements above referred to are as follows:

**STATEMENT OF MR. S. J. WETTRICK, ATTORNEY AND MANAGER
OF THE TRANSPORTATION BUREAU OF THE SEATTLE CHAMBER
OF COMMERCE AND COMMERCIAL CLUB.**

Mr. WETTRICK. As has been stated before, I am regularly the attorney for and the manager of the transportation bureau of the Seattle Chamber of Commerce and Commercial Club, which represents the commercial, industrial, and shipping interests of the city of Seattle and community, and these are the interests that I represent at this proceeding here.

While I have not taken the trouble to send out any letters or telegrams to line up all of the other cities or towns that are in the same position that we are, and ask for their permission to represent them here, or to enter their appearance, it is safe to say, and in fact I know that their position upon the question is the same as our position; so that it may be said, of course, that the views that those of us who are here representing the coast cities express will represent the views of the Pacific coast interests generally, and perhaps any other interests throughout the country which are in the position that the coast cities are, located at the competitive points, where the departure from the long-and-short-haul clause is noticed and necessary.

I have regretted, as the matter has proceeded here, to note that the impression seems to be that the Pacific coast cities have no particular interest in this matter. Of course, the intermountain representatives have always contended that, and now it seems, from the statement made this morning, that the carriers have come to the same conclusion, and I want to try, if I can, Senator, to make clear how we view this question, and I want to explain in as modest and humble a manner as possible that our interest in this matter is not at all a selfish interest.

I do not know but what, as you have gotten the view of the people who are interested in the city of Spokane, you have come to the conclusion, perhaps, that our position is merely one of trying to maintain some advantage or preference to which we have no right, whereas, our position is that unless through an artificial law, or some other means, the natural conditions which exist at the coast

cities are restricted and limited, we know that the carriers will be forced to make rates which will meet the water competition, and of course, that is of some advantage to us.

Now, I assume that when the carriers say, as was stated this morning, that they do not consider that we have any right in a matter of this kind, that they mean this; that whether they meet these water rates and give us water competition in rail rates, makes no difference to us, because we will have the equivalent of those rail rates during normal times; namely, that we will have water rates, and, of course, it is true, and that is one of the things that in considering this situation we always come to, that no matter what may be done by these competitive rail rates, we are always in a position where we can avail ourselves of the low rates which water transportation affords. So that in one sense it makes no difference whether the railroads are prohibited from meeting water competition or not, but for the same reason, namely, the fact that we can turn to the sea and avail ourselves of water transportation, we do not think are injured in the least if the carriers are permitted to meet the water competition.

So, then, if to permit the carriers to meet the water competition is of any advantage to us at all, they are advantages which we can enjoy without any detriment or harm whatever to the intermountain cities, and, in fact, as I think must appear quite conclusively by this time, with benefit to them, because whatever of our traffic we route under competitive rates over the rail lines, which nets the carriers something, as has been said, over and above their out-of-pocket cost, goes just to that extent to maintain the means of transportation upon which the interior cities are solely dependent.

Now, I want to be just as frank as I can, and say that I am not urging any of the things that I propose to say here from any selfish reason. In a broad, general way I think it can not be gainsaid that it is to the interest of the entire country, the Pacific coast, the intermountain territory, and everyone else, if the carriers are not restricted and limited by laws from meeting the natural conditions which exist—from meeting the competitive forces that they have to meet everywhere. In fact, to prevent them from doing so would undoubtedly mean to cripple them very seriously, and it seems to me that it must be obvious that if they are making any money on the competitive traffic which they handle, and they are denied the right to do that, that they must charge higher rates for the traffic which is not competitive.

So that in the first place, I think it is perfectly proper for us to appear in a matter of this kind, interested, as we are, in having all the means of transportation possible, to urge here or anywhere else what we believe to be not only in our interest, but in the interest of the carriers and shippers generally, and the country as a whole; but there are other things. To permit the railroads to compete furnishes us an additional and competitive transportation service which, as I said a moment ago, we can enjoy without the slightest harm to the interior communities, which does not accentuate any discrimination which exists. If we are in a position to obtain our freight at water transportation rates, then what difference does it make to any community if we are permitted to bring them by

rail, or any other means of transportation that may be available, and why should anyone particularly have an objection when, by so doing, we would be joining in giving traffic to a means of transportation on which they depend?

So, if there is anything that I want to make perfectly clear, it is that there is absolutely not the slightest feeling about the question, so far as the people of Seattle or the western part of the State are concerned. The cities of Spokane and Seattle, as I have said before, are in the same State, and in one sense we are perhaps as much—I might say more interested in the development of the State of Washington, the northwest and the entire western country than we are about the contending claims of shippers in any two communities, and if we can continue a system of transportation which has existed heretofore, which enables the carriers to best serve in view of the natural restrictions which exist, all the communities of a particular State, then, certainly you have absolutely the best and most flexible transportation condition which could possibly exist.

Now, an additional transportation facility opens up to us increased markets of supply. It opens up to us additional territory in which we can dispose of our products, and right here, lest I forget to emphasize it later on, I want to mention the fact that on the things which the State of Washington produces—which this western country produces, that we ship to the great markets of the East—there is no discrimination except on one or two commodities that have been mentioned.

The rates on lumber and on the products of the mines and other things from the inland empire—from the interior country—actually move to the markets of the East at lower rates than we pay to ship to those same markets, and the reason why the carriers have made the rate adjustment, eastbound, on those commodities, as they have explained, is to provide the widest distribution. Why, it has been mentioned here, for instance, that sugar rates exist from Utah to Chicago, which violate the fourth section—which are higher to St. Louis and other intermediate points, made to meet competition from other parts of the country.

Now, that is an advantage that the Utah people enjoy, which will be taken away from them if we have an absolute long-and-short-haul clause. Rates on salt from Saltair, Utah, have been mentioned, to Portland, Oreg., which are considerably lower to Portland than they are to points intermediate between Saltair, Utah, and Portland, made lower to Portland than they would otherwise be in order to meet the competition that comes up from San Francisco Bay, and in that instance, of course, Salt Lake benefits by the fact that the carriers are not required to conform to an absolute long-and-short-haul clause.

Mr. CAMPBELL. Now, you claim that if the absolute long-and-short-haul clause was applied on traffic westbound it would have a tendency to increase the rates to the interior points. Now, if that is true westbound, what becomes of the increase to the interior caused by the hauling of products eastbound, without complying with the fourth section?

Mr. WETTRICK. Well, Mr. Campbell, that question there was fully discussed by Mr. Spence and the railroad men, and I am not going

to undertake, because I think it would be useless, to justify every rate condition that exists. It has been fully explained what different things the carriers take into consideration in establishing that adjustment, and while, of course, your position is that you are not treated in the same manner, the fact of the matter also is that there are many things which make a difference, and that the eastbound adjustment of the rates is favorable to you as well as it is to us.

Mr. CAMPBELL. That is not the point. The point is this: That if the westbound traffic would comply with the fourth section, you say it would increase the rates to the intermediate section. Well, now, then, if that is so westbound, the fact that the eastbound traffic is carried without violation, then you should increase the rates to the interior points in the East, according to your argument, but it does not do it. That is what I want to call attention to.

Mr. WETTRICK. Well, of course, I would have to admit, Mr. Campbell, that the tendency would be the same, so far as that is concerned.

Mr. WOOD. If I may be permitted to interrupt the suggestion from Mr. Campbell, Mr. Spence pointed out that the effect of the withdrawal of the right to meet water competition at the ports westbound would not only have a tendency to increase the rates to the intermountain country but it would also have a tendency to increase these very low eastbound rates on the products of the intermountain country and the whole western country, because of the increased expenses that would be incident to the great empty car movement that would be created, and in order to recoup as far as possible the loss from that net revenue that had resulted from the coast business.

Mr. CAMPBELL. Yes; but if your argument is true as to westbound it must be true as to eastbound, from the fact that you haul these products eastbound, without violating the fourth section, and it then must throw a burden upon the interior, which you are now making up by violating the fourth section, westbound.

Mr. SHAUGHNESSY. Another point I would like to call attention to at this time is that the intermediate or intermountain points have never asked for less than a reasonable rate applied at intermountain territory from all eastern defined territory. Mr. Spence made it appear that the rates as now constructed and applied to intermountain points were in and of themselves less than fully compensatory. The intermountain territory has never contended for a less than just and reasonable rate; neither do we ask at this time for such an artificial arrangement to continue for the future, even though it may result in increasing our rates to a just and reasonable basis, if they are not at this time fully just and reasonable. That is the answer to that. May I ask you a question, Mr. Wettrick.

Mr. WETTRICK. Yes.

Mr. SHAUGHNESSY. The effect of your testimony, then, thus far, is that the railroads be allowed to handle the westbound transcontinental traffic at out-of-pocket rates, because to do so adds to the total revenues of the carriers and therefore enables them to make rates lower at interior and other points. Now, then, that carried to its logical end amounts to this, that it takes the traffic away from your merchant marine, which I assume you, as a water-competitive point, ought to be very much interested in promoting and building up. Now, what are you going to do if you permit the carriers to carry out that scheme of meeting competition, which has the effect of an-

nihilating your merchant marine or water-transportation facilities at Seattle and other Pacific coast points? Why are you not interested in the prosperity and the upbuilding of your waterway transportation to the same extent that you are of your rail transportation?

Mr. WETTRICK. Well, that is a pretty long question, Mr. Shaughnessy. I want to correct one thing in your question first, and that is that I did not say that they should be permitted to engage in traffic at rates that will merely pay the out-of-pocket cost, but, of course, something over and above that.

Mr. SHAUGHNESSY. The same definition the Interstate Commerce Commission gives to it, which amounts to the same thing.

Mr. WETTRICK. All right, if we understand you that way.

Now, then, we come to the next phase. I might, of course, come back at you with the question, particularly in view of what has happened at this proceeding, and ask why we should be any more solicitous about water as a means of transportation than about rail. The railroads of this country gird it with iron and steel, and if we had to depend on one or the other we would certainly depend upon the rail lines; and I think Mr. Spence very clearly pointed out that water transportation, looking at it in one way, is supplementary merely.

Mr. SHAUGHNESSY. Merely incidental.

Mr. WETTRICK. To rail transportation. Now, just a minute. Do not come to the conclusion now that I am going to say or have said that we don't care anything about water transportation. We realize, of course, that whatever natural advantage we have inheres in the fact that we are located on the ocean, and in the possibility of water transportation. but we also know that it is unnecessary that the railroads should be forced to keep up their rates at the terminals at a certain point before you could have water transportation; or let me put it the other way: The rates which the water-transportation companies made between the two coasts, following the opening of the Panama Canal, were not unreasonably low rates. They were not unremunerative rates. It has been clearly brought out in the various proceedings in the last two years, in this transcontinental rate case, that the steamship companies made money; made up their surpluses; built up their fleets from a few ships to 27 or 29 in the case of the American-Hawaiian Steamship Co., first, on profits made over the Tehautepec route, then on the rates which they put into effect when they went through the canal. So, I say, the rates which the steamship lines then established were not too low, and I will make this prediction, that when the Panama Canal has been opened long enough for the steamship companies to become organized and to concentrate upon it that you will have water routes from New Orleans to the Pacific coast and from many other points where we have not heretofore had steamships, and that, if anything, we may have these water rates between the two coasts lower than we have seen before; so that my answer to your question is, Mr. Shaughnessy, that to insist that it is the proper thing to permit the carriers to meet water competition does not at all mean that we don't want any steamships or that we are not interested in them as much, if not more, or that because we have rail competition we are not going to have any water competition; but I think we must assume that whether the steamships are operated by private interests or by the

Government, if it should have a merchant marine, that there would be no attempt made to charge whatever rates could be made, in order to prevent it from moving by rail, but that under private or Government operation the rates will be only high enough by water to pay expenses of operation and net a reasonable return on the investment; and the cost of water transportation is so much lower than rail transportation that there is no danger of the rail lines driving the steamship lines out of business. Of course, Mr. Shaughnessy, we all read and know a great deal about what competition between railroad and steamship companies in years past has been, and I notice, Senator, that in your minority report on the railroad bill you refer to the fact that the railroad lines have driven the steamship lines out of business.

Mr. CAMPBELL. Did they not drive the steamship lines, organized by Mr. Jacobs, out of business?

Mr. SHAUGHNESSY. The San Francisco Merchants' Association.

Mr. CAMPBELL. Did they not drive that line out of business?

Mr. WETTRICK. I know nothing about that.

Mr. CAMPBELL. Let me suggest, gentlemen, that you give Mr. Wettrick an opportunity to make his statement, and when he gets through with it, ask him questions if you desire to.

Mr. WETTRICK. If I may, Senator, I would like to finish what I was on there now.

Now, of course, I do not want to impeach anything that you have said in the record or the report to which I referred there.

The CHAIRMAN. I do not claim that it is free from error; and to be perfectly frank, I want to get your views in regard to it.

Mr. WETTRICK. But it is a fact, of course, that for 7 years, or even 10 years, there has been no driving of steamships out of the coast-to-coast service by the railroad lines. We have had, as has been shown here, steamship competition increasing. There were, as the records of the commission show, 49 ships in the coast-to-coast service, following the opening of the Panama Canal, at rates, Senator, that did not just go a little ways under the rail rates then existing, but at rates so much lower that the carriers felt compelled to go to the commission and say to it on schedule C commodities that unless they were permitted to establish lower rates than those which the commission had authorized them to establish in 1911, when the decision was first rendered, that they would absolutely lose all of that heavy traffic to the steamship lines. So, let us get away from the idea, if any of us have an idea, that during the last 7 or 10 years the railroads have set the pace on transcontinental freight traffic, because they have not. The steamship lines have voluntarily made their own rates, and it has been, you might say, a constant effort on the part of the rail lines to secure permission from the commission to meet the varying degrees of water competition that have existed during that time.

So my answer to the question that Mr. Shaughnessy put—I want to make it perfectly clear—is that our sympathy is not with the rail lines to the extent, or at all, that we want to favor them to the driving out of our steamship lines from business. We would not have this question before us here if it were not for the fact that water transportation is, as I say, much cheaper than rail transportation, and the fact of the matter is—and it has been demonstrated by the

rates that have existed in the past—that the difference is so great that the steamships can go into coast-to-coast business at a profit at which the railroad lines can not meet and handle traffic, which the railroad lines can not and will not take away from them.

I say can not and will not take away from them, notwithstanding what I want to discuss later on, and that is something about the relatively small increased cost in handling traffic when the plants and facilities and other things are present.

Mr. BARTINE. Before you go any further, I take it that you are desirous of preserving both steamship traffic and railroad traffic. Let me ask you if all the applications which have been made by the railroads for permission to lower their rates at coast points, in order to get a portion of the traffic which would otherwise be carried by water, does not tend to drive some steamships out of business or to keep others from engaging in the business if it is granted?

Mr. WETTRICK. I do not think so, Judge Bartine, because the difference in the cost at which they can handle these freights is so great that when ultimately normal competition is established through the canal, as I just said, I doubt that on some things they will be able to approach each other.

Mr. BARTINE. Now, then, in all kindness, let me suggest to you that if that view is correct, then the railroads could have no possible motive in asking the Interstate Commerce Commission for the privilege of lowering their rates at the coast points. The only way they can get a portion of the traffic that would otherwise go by water is by keeping some ships out of the business; is not that true? You do not want to deny as plain a proposition as that.

Mr. WETTRICK. What was your proposition?

Mr. BARTINE. Every application that has been made by the railroads for permission to lower their rates at coast points, in order to cut off water competition or to get some of the traffic which would otherwise go by water, must in its very nature have the effect of keeping some ships out of the business that would otherwise be in the business. How can you get away from a plain proposition like that?

Mr. WETTRICK. That would have to be admitted, of course, that no ships are necessary to carry coast-to-coast traffic that the rail lines carry.

Mr. BARTINE. I do not want to discredit your motives in any way. If that is true, and if you are anxious to maintain steamship competition with the rails, to preserve both rail and water commerce, how does it come that in all of the cases we have had you have always been on the side of the railroad?

Mr. WETTRICK. For the very reason, Judge Bartine, that we think both rail and water transportation should be maintained, and that a condition should be permitted to exist under which that can be done; and in that respect we are not at all different from many others. It is simply bringing about between rail and water transportation the equivalent that Mr. Spence spoke about Saturday. That has been our interest in the matter; and the reason why we have been in these cases was to maintain that very thing.

Mr. BARTINE. I do not think that you quite meet the proposition fairly. I do not mean to say you are unfair in your mind, but I do

not think that your answer meets the issue as I have presented it to you. You protest to be equally friendly to the rail lines and the water lines, and yet in every single case you have been on the side of the railroads and against the water lines.

Mr. WETTRICK. Yes, sir; but we were forced into that position, Judge Bartine, by the offensive which you have been continually carrying on. There has been no one who has tried to force down the rail rates at the terminal cities, but you have always sought to deprive the carriers of the right to make the low rates necessary to meet water competition, and for the reason, as I have said, that we are interested in both means of transportation; that we want to maintain a wholesome competition between the two; that the benefit of the natural advantages which we possess in being located where rail and water meet may accrue to us—for that reason we have appeared in these matters to present the other side of an issue which has always been forced by the intermountain cities.

Neither have we, of our own initiative, taken up that question. Always have we appeared in a defensive position, because we were placed in that position by the complaints that you have been bringing.

Mr. BARTINE. Senator, do you object to my proceeding a little further on this line?

The CHAIRMAN. Why, if Mr. Wettrick has no objection, I have none.

Mr. WETTRICK. I have none.

Mr. BARTINE. Mr. Wettrick, don't you know that at every hearing at which you have appeared and at which I have appeared I have earnestly protested to the Interstate Commerce Commission that the coast cities had no legal status in these cases; that the one sole ground upon which they stood was that because they had water competition at their doors, they were, therefore, legally entitled to lower rail rates, and for that reason they had no business in these proceedings? Now, in every case is it not true, Mr. Wettrick, that you have been upon the side of the railroads? Now, how can you say that you favor the railroads and the water-carriers alike, when you are always on the side opposed to the water carriers?

Mr. WETTRICK. Of course, Judge Bartine, I do not think that question needs any answering whatever.

Mr. BARTINE. I think it does, in view of what you have said.

Mr. WETTRICK. That is easy enough to explain.

Mr. BARTINE. Well, I will be glad to have you explain it.

Mr. WETTRICK. The interests of the railroads in this matter accord with our own interests, and, therefore, naturally we are on the same side; but not as has been intimated here, in order that through any collusion or any blackmail, as somebody even has suggested, or anything of that kind, we may secure any favors from the railroads. Why, it seems to me, Mr. Chairman, that almost the most effective answer that can be made to this entire contention is to ask the question. Why do the railroads make these low rates to the Pacific coast terminals? Certainly not because they want to favor the Pacific coast cities. Certainly not because it is any advantage to them to do so, except for the conditions which exist. The only reason why they do it is because they are forced to do so by natural conditions which exist, over which they have absolutely no control.

Now, why are we on their side? It happens that we are on their side. We are not always on their side. We have just as many controversies, perhaps, with the railroads with regard to rates as other people have, and, really, there is no foundation for any such charge at all. I would not make it myself, under any circumstances, if I valued respect for what I said.

Mr. BARTINE. Let me ask two or three more questions, and I am going to quit.

Mr. MANN. Why do you not finish, if you have not finished?

Mr. WETTRICK. If you will wait a minute. Now, why are we on the side of the railroads? Not, as I say, because we are working with them or cooperating with them. Neither are we taking the position that we do by force or compulsion, as the carriers do when they make these low rates, but here is our position: We are located upon the water and we know that unless by an artificial law or some other unnatural restriction the rail lines are deprived of meeting there the natural conditions which exist that we will have these water competitive rates, and then we go further and say—at least we argue, and I think we have a perfect right to say, too—that to prohibit the carriers from doing that is to deprive us of a natural advantage which we should be permitted to enjoy, and that without injuring anyone else—and, in fact, has been demonstrated—actually benefiting the communities who are objecting most strenuously against permitting the carriers to meet that competition; and I am going just a little further than that, if the Senator please, because we come from the same State, and I want to make my position perfectly clear, so that it be not thought that we are selfish in the position that we take.

I have said, and, I think, with more show of reason than that urged by the intermountain cities, that if there is any selfishness in either the position of the Pacific coast cities or the intermountain cities, that it lies east of the mountains, and I say so for this reason: We are located upon the water, where the natural conditions force these competitive rail rates. Spokane, to use it for an illustration, is not located upon the water. She, therefore, under natural conditions, is not in a position where she is entitled to or can secure the benefit of the low rates which water transportation affords. Not being in a position to do that, it seems to me that her purpose in these proceedings is to maintain an equality in rates with cities located upon the water by depriving the cities located upon the water of the natural advantages which exist there.

Now, do I make myself clear? Does that appeal to anyone as being just, as reasonable? And the charge that is made against us is that, through favoritism or otherwise, we maintain these low preferential rates, and our purpose in these proceedings is to force up the intermediate rates, to maintain a discriminatory adjustment. I deny that entirely. Never have I made any contention for any higher rates at intermediate points. The fact of the matter is we have no concern about those rates. If anything, we wish you luck. Get the best rates that you can.

Mr. BARTINE. Now, then, will you stop right there and let me ask you, has the intermountain country ever asked for anything except a lowering of the intermountain rates?

Mr. MANN. Yes; it has asked for the terminal rates, over and over again.

Mr. BARTINE. That is, a lowering of the intermountain rates. We have not asked for a lowering or a raising of the terminal rates. Our complaint has always gone to the intermountain rates per se, and we have only asked that they should be lowered to the level of the coast rates, and you have fought us on every occasion, Mr. Wettrick.

Mr. WETTRICK. No.

Mr. BARTINE. Then, what were you doing there?

Mr. WETTRICK. No; Judge Bartine; let me answer that now, because that is the charge that Mr. Campbell made, and I can answer it so that my conscience, at least, will be clear, if nobody else understands me when I say that.

Mr. BARTINE. I am not challenging your conscience at all.

The CHAIRMAN. A man is doing well to have any conscience, for over 20 years in this fight.

Mr. WETTRICK. While we appeared in that case, Judge Bartine, if it had been merely a question of whether or not your rates should be reduced, or were unreasonable, we would not have been concerned about it at all, but the reason why we were there and have followed this matter through all of its various stages, was because we knew that the inevitable result of the proceedings you were carrying on would be what has actually been demonstrated now, the advancing of the coast rates to the level of your rates, and, therefore, we were simply there to show that this is an abnormal condition that has existed, and that we did not think that the entire transcontinental rate structure should be overturned merely because of the existence of a foreign war, over which the people of this country have had no control, which would be temporary, merely, and which, in the long run, will have to be otherwise anyhow, whether we again get rail competitive rates or not.

Mr. BARTINE. Pardon me. Now, I want to say to you personally that I have the highest regard for you, and I am not questioning your motives at all. Every community is looking out for its own interests, and I assume that you are looking out for yours, but I want to suggest to you that I have been connected with these intermountain cases a great deal longer than you have, and I know exactly how they started.

Preliminary to another question, I am going to ask you—I want to ask you to read the complaint in the Reno case, which was drawn by myself, and you will see that we asked for nothing under the blue sky of heaven, except a lowering of the intermountain rates. We don't ask any change whatever in your coast rates, and we, in the evidence, have attempted to show that your coast rates, applied to intermountain points would be amply remunerative to the companies. Now, so much for that. Just one question and I am through.

Mr. WETTRICK. Judge, would it be fair if I should interpolate something there?

Mr. BARTINE. Yes; I did not think you wanted to.

Mr. WETTRICK. I will admit that your contention was that your rates were unreasonable, and that they would be reasonable if the terminal rates were applied at intermediate points, but the primary purpose of your complaint, nevertheless, was that the discrimination which existed should be removed.

Mr. BARTINE. Yes.

Mr. WETTRICK. That there was now no water competition justifying—

Mr. BARTINE. Hold on. You are five years behind the times. I am talking about the commencement of the Reno complaint—when it was first filed, and when there was water competition.

Mr. WETTRICK. I have been referring to the situation—

Mr. BARTINE. I led off in these cases long before you did.

Mr. WETTRICK. That does not make my answer any the less correct.

Mr. BARTINE. It does not apply to the facts, that is all.

Mr. WETTRICK. I will simply change it to this extent, and be equally frank in my second answer, that while you have been asking and claiming all of the time that your rates are excessive, and I don't know whether they are or not, and I am not going to express an opinion on it, because you have offered better proof and know more about them than I do—

Mr. BARTINE. Yes.

Mr. WETTRICK. But in every case involving your rates there has nevertheless been involved always the relationship between the rates to the intermediate communities and the coast, so that discrimination was involved, and there was always involved the question of whether the carriers should not be denied the right to meet the water competition at the Pacific coast terminals.

Mr. BARTINE. Unquestionably that is true. We were asking to have a thing done which you say ought not to be done. I grant you that primarily our first complaint, before it was amended, was rested upon discrimination alone, but we proceeded further and amended our complaint, and specifically alleged that the rates to the intermountain section, particularly Nevada, were excessive, and that terminal rates, applied in Nevada, would be remunerative and would be just and reasonable rates.

Now, I do not want to destroy the connection of your statement in any way. I have not taken much part in the cross examination—have not expected to do anything of that kind. I may make a little statement of my own when I get the opportunity, but I want to remind you of the fact, Mr. Wettrick, that at the last hearing before the Interstate Commerce Commission, when the city of Spokane and the railroad commission of Nevada, in view of the elimination of water competition—the absolute cessation of water competition—asked to have the schedule C order canceled, the railroad people themselves made absolutely no showing, and the only showing in opposition to our contention was made by the coast cities and by business men generally.

Mr. WETTRICK. Judge, that goes back further—

Mr. BARTINE. It is a fact, no matter where it goes to.

Mr. WETTRICK. That goes back no further than my memory of rates, and I must beg to differ with you on the statement you have just made.

Mr. BARTINE. Did any railroad witness testify at that hearing? Will you name him?

Mr. WETTRICK. I do not remember now. I have not any specific witness in mind. I know that all of the attorneys who were present—

Mr. BARTINE. They were all present, I understand, and they asked questions, and so on, but they placed no witness on the stand themselves, as railroad witnesses. There were representatives of coast cities or business men who alleged that they had unexecuted contracts which would be interfered with if the rates were changed.

Mr. WOOD. What hearing are you talking about?

Mr. BARTINE. I am talking about the last hearing upon the application of the Railroad Commission of Nevada to have schedule C canceled, because water competition had entirely disappeared.

Mr. WETTRICK. Judge, you are referreing to the three-day hearing that we had before the full commission here on the 24th of April, 1916?

Mr. BARTINE. That is the very one in which the business men strenuously contended that the schedule C order should not be canceled, or modified on the basis of the temporary conditions created by the cessation of traffic through the Panama Canal.

The CHAIRMAN. Judge, we will give you an opportunity, and be very glad to hear from you fully on these subjects.

Mr. BARTINE. I will be awfully glad to quit right now, Senator.

The CHAIRMAN. And in the meantime I think we had better go ahead with Mr. Wettrick's statement.

Mr. WETTRICK. Yes. I just wanted to say, Judge Bartine, that your memory was wrong on that. About the only witnesses that were heard at that hearing were the witnesses of the American-Hawaiian and the Luckenback Steamship Cos. It was over in the commission's room. All of the railroad attorneys were present there. It was really a matter of argument and discussion, back and forth.

Mr. BARTINE. That brings out a question of fact. Those railroad men were absolutely opposed to you and opposed to the railroads—those steamship men. I should say.

Mr. WETTRICK. Yes; I know that the steamship men were, and that is not surprising at all. They are here now, represented by a gentleman who, in discussing the principle involved, admitted that it was all right in a case where the long or circuitous railroad line is to meet a short line; but while it is the same principle, where a rail line competes with a water line it should not there be permitted to operate, and representing a steamship company as he does he puts it on the broad and patriotic ground that that is necessary to develop a merchant marine. The principle is the same, but his interests lie with the merchant marine.

The CHAIRMAN. A merchant-marine man thinks the best thing that can happen to any country is to develop the merchant marine. That is natural. He thinks that is patriotism.

Mr. WETTRICK. That is quite natural; but how can you deny the principle in one case and say it is all right in the other if you are really going to express an opinion on this matter? It seems to me it is impossible, and as I have said before, if Mr. Lyon is solicitous about the merchant marine I will simply say to him we are not trying to destroy the merchant marine. It is true the Luckenbach and the American-Hawaiian steamship companies deserted the coast-to-coast business as soon as they could get more money, while the railroads stayed with us and have been carrying not only the business they carried before, but the increased business to which is due in part at least

the car shortage and other things that have been mentioned, and so there are a good many reasons why we think it is a good thing that the railroad lines of this country should be kept in a prosperous condition. That has been demonstrated in the past, and we do not need to be solicitous about the merchant marine.

When Mr. Lyon's steamship company and the other steamship companies are no longer able to get the high rates which they have been able to get in the foreign business they will come back to the coast-to-coast business again. That is what they started in to do. They have started in to do that, and they will do it again, if they still have their steamships; and if not, there will be others available, and we will have a merchant marine and ships in the coast-to-coast business whether you pass an absolute long-and-short-haul clause or not. I mean, we will have that under the present conditions, and I can not help but think that the purpose of the steamship companies in these hearings that have been going on for the past two years has been to bring about a condition which they knew would result in raising the terminal rates—the rates of the Pacific coast cities—in order that the coast-to-coast business might the sooner become attractive again for their ships; in other words, so that they could come back into the coast-to-coast business at rates somewhat higher than they otherwise might.

Mr. LYON. I stated that exactly in my brief—that that is what we wanted.

Mr. WETTRICK. Certainly.

Mr. LYON. I think, Senator, they ought not to put us in the position of being patriotic here. The merchant marine I represent is not patriotism. I learned a long while ago that patriotism was the last resort of a damned scoundrel who had nothing else to base it on. We are here to represent the facts—can't have both.

The CHAIRMAN. All right, we will let it go, then, that you are not patriotic. I thought you were.

Mr. WETTRICK. Now, I did not have any fixed method of procedure in what I wanted to say here, and some of the questions that have been put to me have brought up things which perhaps will make it necessary for me to proceed in a different order than I have heretofore; and by way of answering a question that Judge Bartine put to me, as to what our right in this matter is, I want to say that I frankly admit that we have no legal right to the water competitive terminal rates, lower than the intermediate rates; no legal right in the sense, Senator, that we could in a court or any other tribunal force the carriers to give us lower rates. In other words, if we have competitive rail rates, it will not be because we can force them legally or through undue influence or anything else, but it will be because there is some other natural condition which brings them about; but as I said before, if the carriers are not prohibited, we know that they will have to, and it will be to their interest to do it; that is, to meet these water rates.

The CHAIRMAN. You have appeared, have you not, in the cases before the Interstate Commerce Commission?

Mr. WETTRICK. Yes.

The CHAIRMAN. So that, at any rate, gave you a legal status, or else you would not have been a party to the case. They considered

you a party in interest, to such an extent as to give you a standing before that commission?

Mr. WETTRICK. Yes; and have always admitted that we were as much interested in it as anyone else, though we could not legally force the carriers to give us those rates. But our purpose in this proceeding, Senator, has not been to secure, you might say, any affirmative action on the part of the commission, giving us these lower rates, but our purpose has been to oppose the making of any order, or the taking of any action which would prevent the carriers from making lower rates, or to put it in another way, which would prevent the operation of the natural conditions which exist; and then I come to say that when you deprive us of the natural advantages which do exist, you are depriving us of something that we are entitled to, and to the extent that you equalize the natural advantages that we have with the natural disadvantages that other places have through artificial means, not forced by natural causes, to that extent we are deprived of something that we are entitled to and that we should not be deprived of.

The CHAIRMAN. Do you not consider it quite artificial that a railroad company is allowed to charge one community more than another for the same service?

Mr. WETTRICK. I would not contend for that a minute, Senator, if the railroad company could do anything else, and even then I might not contend for it, if I did not think that for the railroad companies to do that is, after all, the best thing for everybody concerned.

The CHAIRMAN. Yes; it may be the best thing. That is, I will admit that for the sake of the argument. You contend that it is the best thing. Others contend that it is not the best thing; but the point I was inquiring about was whether or not it was a natural condition. I interject that remark because you are insisting upon that condition.

Mr. WETTRICK. Of course, the meeting of competition fairly is a natural condition. When a railroad meets a water rate it does nothing but to meet the natural condition.

The CHAIRMAN. Water competition is a natural condition, but the fixing of railroad rates is a purely arbitrary governmental matter.

Mr. WETTRICK. Well, I know that that has been your view, Senator, from communications we have had. In other words, as I understand it, your position is that our natural position ends with unrestricted water competition—that we ought to depend on that?

The CHAIRMAN. I will not undertake to state what my views are in regard to it. As I say, I think you are familiar with them, but my purpose here now is to give you an opportunity to state your views before us and everybody else that is interested.

Mr. WETTRICK. Then I say, of course, that our purpose has never been to invoke any action on the part of a commission or a court to give us these lower rates, but it has been to try to prevent any action being taken, either judicial, legislative, or administrative, which would prevent natural causes from operating, because we know that if natural causes are permitted to operate, we will have water competitive rates, because the railroads are forced to meet the conditions that exist. And, so I say, I think it is perfectly right to say that if you deprive any transportation agency from meeting the

competitive conditions which exist, you are depriving us of an advantage, or a benefit which we are entitled to, and then, of course, always comes the question, why should we do that or why should that be done, if it does no harm to anyone else? In fact, it is a benefit to those who are making the principal objection.

Now, I want to quote in this connection from the decision in the Spokane case, in 15 I. C. C., page 419, where the commission says this:

The complainants urge that the defendants, by charging a lower rate to Seattle from eastern destinations than is applied at Spokane, the intermediate point, discriminate against that locality, and that the commission should order a removal of that discrimination. We have expressed the opinion that this contention is not well taken; that Seattle, by virtue of its location upon the ocean, can command a better rate from eastern territory than Spokane, situated 400 miles inland; that the carriers may meet this situation at Seattle by making a lower rate than is accorded Spokane. This is a disadvantage of location under which the city of Spokane rests, and of which it can not justly complain. Spokane is entitled to ask of these defendants, not of necessity the same rate as Seattle, but a rate which is, under all of the circumstances, just and reasonable, and our duty in the premises is to establish such just and reasonable rate.

And further, as to the question of what our right is in this matter, I want to quote from the decision last June of the Interstate Commerce Commission, from Mr. Harlan's opinion, and I should explain that that was the decision in which the Interstate Commerce Commission found, because there is now no effective water competition between the two coasts, higher rates could no longer be maintained at intermediate points, and required carriers to remove the discrimination.

Commissioner Harlan dissented from that, because he said the then existing rate structure had always been in effect, and in the years to come that would again be the situation; but so far as the statement which he here makes is concerned, it is a repetition of what the Interstate Commerce Commission has repeatedly said:

In the development of transportation nothing has yet appeared to suggest that commerce will ever move by land so cheaply as by the natural routes. So far, therefore, as may now be anticipated, the all-water route through the canal must control and, for the generations to come, be the basis, in large degree, of the trade and commercial relations between the intermountain cities and the competing communities that are favored by being ports on the Pacific Ocean, and unless the economic advantage of being terminals for an all-water route from coast to coast be taken away from the Pacific coast cities by some upheaval of nature or by legislation, they apparently will have in the future what they have always had in the past, namely, lower all-rail rates on commerce that can and does move freely by water than the less distant intermountain cities, in the nature of things, may expect to have. In all countries important cities are to be found the prosperity and commanding position of which grow largely out of the fact that they are on the water and, therefore, have the benefit of that cheaper mode of transporting their commerce, and in many reported cases we have said that such communities may not lawfully be deprived of the benefits of their location on navigable waters by compelling the rail carriers that serve them to maintain rate adjustments that ignore that natural advantage.

The CHAIRMAN. Let me ask you just a word; you spoke of it as a natural advantage. Suppose there were not any intermediate points at all. You do not claim that you are entitled to any aid from the intermediate points, do you, in getting your transportation?

Mr. WETTRICK. We do not but to the extent that they furnish freight that helps pay for maintaining the lines.

The CHAIRMAN. I am speaking about the cost of the transportation. I am quite interested in your answer. Do you mean to contend that Seattle and Tacoma, to use them as an illustration, are not only entitled to their advantages which they have from water transportation, but that they can call on other communities of the country to contribute to them to get cheaper railroad transportation also?

Mr. WETTRICK. No; I would not say that, Senator.

The CHAIRMAN. You would not say that?

Mr. WETTRICK. No.

The CHAIRMAN. That is the effect of the situation, is it not?

Mr. WETTRICK. Well, I do not—

The CHAIRMAN. Take your time about answering. You need not answer right now. It is just a suggestion.

Mr. WETTRICK. I want to answer it now. Let me see whether I understand your question. To make it a little more specific—

Mr. MANN. Mr. Wettrick, you remember the Minimum Rate case, do you not, in which the Supreme Court held that where a carrier does not charge in freight rate between competitive points more than the cost of transportation no burden will be imposed upon any other intermediate point? That is the Supreme Court's decision, 181 U. S., page 1, if I remember right, Senator.

The CHAIRMAN. Let that go in the record. In view of that, if that is the case and there were no intermediate points to assist in the matter, how would you get your railroad at all? How would you have any railroad transportation on this theory of out of pocket cost? Where would you get it? There has got to be some money spent to build a railroad in the first place and to equip it with cars. Where are you going to get the money to do that with?

Mr. MANN. Putting it in another way, I suppose you would say, How is the railroad going to pay interest on its bonds, its overhead expenses, and its dividends?

The CHAIRMAN. That is another way of putting it, but I was trying to reduce it to a little more fundamental form.

Mr. MANN. Of course, as far as these transcontinental roads, operating through California are concerned, we must remember that they were built with Government assistance very largely in the first place. As far as the payment of the interest on bonds and those other items of expenditure to which a railroad is entitled, and which it must meet, just as Mr. Spence said Saturday, that part of their income must be derived from other traffic, and the assistance which the "competitive traffic" or any competitive traffic lends in that direction is, so to speak, so much velvet, which they could not otherwise obtain if they did not haul that traffic. Now, then, it is true, as Mr. Spence said, that those additional expenditures—this additional expense and those dividends and interest on bonds must be derived from the whole business, and if it is going to be obtained entirely from the business of these transcontinental lines, without the assistance of that part of the income over and above the cost of transportation, which helps in this regard, then that part which is derived from the competitive freight must be an imposition upon the other traffic of the road; and allow me to say that a part of that traffic of these roads with which we in the Pacific coast section, and our friends in the intermountain section, and those in the central section, which Mr. Winchell spoke of this morning—the trans-

Missouri section—are all definitely and immediately interested in is the local transportation service of these carriers, which itself would no doubt have to bear a portion of this additional requirement, if these railroads were deprived of the competitive traffic.

The CHAIRMAN. Yes; now I understand—without interrupting too much—what the effect of that is, and also of the very interesting statement made by Mr. Spence and others, that the railroads, if required to make a rate to the seaport that will pay the cost of the operation and the cost of construction, which is interest on their bonds, and the cost of capitalization—financing it—dividends on their stock, if they are required to do that, they can not compete with the ship lines at all.

Mr. MANN. And they lose the business.

The CHAIRMAN. They lose the business. That is the result of not being able to compete. Now, do you not think that the railroad doing this business ought to be able to pay the interest on its bonds?

Mr. MANN. Certainly.

The CHAIRMAN. Well, that is one of the fundamental requirements, is it not?

Mr. MANN. You might say so.

The CHAIRMAN. How do you contend, then, if they can not compete with the water carriers in paying interest on bonds, that we ought to, by an artificial system of rates, by calling on interior communities, contribute money to subsidize them, so to speak, to compete with the water carriers, without paying interest on the bonds, or, in other words, without paying what it costs to build the railroads?

Mr. MANN. Senator, let us take an example of a large manufacturing house. It does, let us say, \$100,000,000 worth of business a year. It makes 10 per cent, we will say, on \$100,000,000 a year, and yet on perhaps 10 per cent of its product it makes only 1 per cent. Why is that? Because upon the surplus product of that concern, and in order to keep their mills running, to keep their men in employment, and to keep a steady and progressive movement in this manufacturing institution, the surplus product is sold at 1 per cent profit only, and yet the total operation of the institution brings in a 10 per cent profit. This coast-to-coast business, all of this competitive business throughout the United States, one road competing with another, or, as the saying is, the long line competing with the short line—all these long and short haul adjustments in the Southeast, and it is spider webbed with them—may be regarded as the surplus business of a railroad which brings them in 1 per cent, which helps to make up the 10 per cent upon the whole business of the road, and which, if they lost, would cause them, perhaps, to make not more than 9½ per cent upon their whole business.

Mr. CAMPBELL. Mr. Mann, may I ask you right there, if that is the theory, why, then, would it not be better for the interests of the interior to tear up the track between the intermediate territory and the coast, or that is, that it never would have been built? There would have been, at least, interest on a very large investment that would not have to be made up by the interior, would it not?

Mr. MANN. If you will examine the figures of that matter, and if you will examine the roads on the subject—I have some quotations—you will see very plainly that the effect of that would be that the

rates to the intermountain points would be very, very much higher than they are to-day, and, in the second place, the ocean would still be open and some one would build a road from the coast toward the interior.

Mr. CAMPBELL. But that has never been demonstrated. There has never been any comparison made by the Interstate Commerce Commission or anyone else to show that the rates to the interior would be higher. That is simply an assumption, is it not?

Mr. MANN. No; I do not think that is an assumption. I think that is so clearly self-evident that no one but some one extremely interested would think of denying it.

The CHAIRMAN. The railroad would not object to the rates being higher, would it?

Mr. MANN. I think they would, for this reason, that there is not enough freight produced in this intermediate territory to justify the building of a road for that country; so that, as one writer has put it, they must either be content with the discrimination or do without the road.

The CHAIRMAN. Well, nearly all of it is produced in the interior somewhere, removed from the seaboard? There is very little of it that is produced right at the terminal point? The raw material is carried there sometimes, to be manufactured?

Mr. MANN. You might say that of New York; yes. They don't raise any wheat or corn there.

Mr. WOOD. May I suggest, Senator, that it seems to me that Mr. Campbell's question to Mr. Mann—possibly your own question—seems to rest upon the assumption that all that might be denominated as the interest charges, or the cost of construction of that part of the railroad west of the intermountain district, is borne by the traffic to the intermountain country, if the rates to the coast were carried at the out-of-pocket cost and something more.

Now, obviously that piece of railroad between Reno and San Francisco, and in California, does not subsist entirely on this traffic from eastern defined territories to the coast. It carries traffic besides to the coast which is beyond the limit, which can be reached by the water lines, such as grain from the grain fields of the Middle West. It carries the local traffic of those States. It carries the traffic from San Francisco and the other ports back into the country. It carries a large amount of traffic from Pacific Coast States to points in the interior, not reached by the water lines, as well as to other points that are.

The CHAIRMAN. And it carries a great deal of traffic of such a character as Mr. Spence pointed out, like fruit, for instance, that the ships are not equipped to handle.

Mr. WOOD. Yes; that the ships are not equipped to handle. Now, you can not earmark the many cars, and you can not say that the revenue that is derived from this particular piece of transportation has been devoted to the payment of this particular debt. All you can do is to take the thing as a whole. We start with the problem, as I think Mr. Spence put it Saturday, let us say that in order to pay the interest on our bonds we need a total of \$10,000,000 over and above the actual expenses of transportation. Now, we get a part of that from one character of traffic, and we get a part of it out of another. All traffic can not contribute ratably to that fund

out of which the interest is to be paid. Here is some traffic to the coast, we will say, out of which in the aggregate we can make \$1,000,000, but which does not pay regularly part of those interest charges. If we don't take that traffic to the coast and don't get that \$1,000,000, then obviously we have got to assess that \$1,000,000 on the remaining traffic and distribute it on the traffic that is left.

The CHAIRMAN. I know that is the reason that is given, and given very clearly and cogently, but there is this circumstance, if you try to arrive at a conclusion as to what the real reason is, and from circumstantial evidence, as well as positive testimony, that a great many of these commodities on which these so-called terminal rates are given, that don't move by water at all, and never would move by water. I won't say a great many, but some, we will say.

Mr. Wood. Well, I think, Senator—

The CHAIRMAN. To make my suggestion complete, so long as they don't move by water, it certainly can not be successfully contended that that rate, which is subject to the same objection which all of these competitive rates are, is a water-compelled rate.

Mr. Wood. I am glad the Senator brought the matter up. It was touched on in some degree by Mr. Spence. I think Mr. Spence made the suggestion that some railroad officers were progressive. Now, the history we can not—there is no use of undertaking to deny these historical facts. The history of the transaction is that in the early days everything that moved was regarded as subject to water competition, and all the rates were adjusted on that theory. Now, they were something more than theoretical, because, if the Senator will examine one of these early decisions by Commissioner Prouty, he will find that Mr. Prouty comments upon the fact that in the course of the case the commission caused the manifests of the steamship companies to be examined, and they found that literally, practically every article of commerce moving between the coasts did move in some degree by water. Manifests of those ships, covering substantially all moving articles of commerce, so that the theory that all traffic was subject to water competition was something more than a theory. It was a fact. But as these cases have progressed, and as the law has been administered, and as we have all learned by experience, it has been shown that that water competition varied greatly with respect to different articles and the distances, and I think that is one of the great achievements of the amendment of 1910.

The tendency of those amendments has been to require the railroad companies to analyze their traffic and their tariffs more closely than they did before, for the purpose of determining what articles were water competitive in such a degree that they must recognize the force of that water competition to an extent which possibly need not be recognized on others. As long as the statute remained as it was all that was necessary to do was to show dissimilarity of circumstances and conditions at the port, as compared with the circumstances and conditions at the interior; then under the decisions of the Supreme Court, that ended the matter. No further examination was required, but when the law was amended and the burden was put upon the carriers to make a case in a more concrete fashion than they had been required before the Interstate Commerce Commission gradually became more and more strict in the matters which

they required to be established by the railroads, and the result is that there has been this progress in removing from the list of articles which were susceptible of water competition, but upon which that competition was not so acute as it was—a great number of articles on which the rates to the coast were formerly lower than those to the intermediate points, and in the later cases we have undertaken to make an analysis of the commodities covered, and of the movement by water, and of the rates by water, and of the points of production, so as to limit the number of those articles to the smallest number possible, and in the proposals that were submitted to the commission in the final hearings on this matter the carriers themselves suggested and the commission practically adopted their proposals that the carriers should be required, upon the restoration of water traffic, not to go at this thing as they had done before, but that they should be required to support their application as to each commodity in the list. That was the course that was taken in connection with the schedule C commodities, of which the Senators have heard so much, where we were asking for a greater measure of relief than was accorded by the present order.

The CHAIRMAN. Will you state again there, just in the briefest form, the character of schedules A, B, and C?

Mr. WOOD. Schedule A comprises those articles upon which the rates to the Pacific coast, following the opening of the Panama Canal, were made no lower than to the intermediate points. In some instances the rates to the intermediate points were lower than to the coast—that is, in some instances they were graded, but on the schedule A articles there were no rates to the coast which were lower than to the intermediate points.

Schedule B articles represent those commodities upon which there was some considerable degree of water competition, or assumed to be, to which the commission's so-called percentage order was applied. That is the first order that they made, after the law was amended, in which it was—

The CHAIRMAN. The one in which they established the zone system?

Mr. WOOD. In which they established the zone system and provided that the rates from the Missouri River to the intermediate points should not be higher than to the coast, and that from the district east they might be higher by 7, 10, or 15 per cent, etc. That is the case that went to the Supreme Court. Schedule B consisted of those articles upon which that adjustment was provided in the tariff. Schedule C consisted of those articles upon which the competition of the ocean carriers, after the opening of the Panama Canal, became so increased and so acute that the railroad companies felt that they could not accept either alternative presented—that is, they could not afford either to go out of the terminal business and retire from that traffic, nor could they afford the penalty of remaining in the traffic, to apply this percentage order in constructing the rates to the intermediate points.

Those were articles largely low-grade commodities, produced in the East, iron and steel articles being the most important, although there were many others, and which were moving in very large volume, by sea at very low rates, and as to those articles the commission required concrete proof with respect to the extent and degree of sea

competition, and in the proposals which the carriers have made to the commission respecting the future, one of their own self-imposed limitations in their suggestion as to how the law is to be administered is that the most concrete proof should be required with respect to all the articles upon which applications for departures from the fourth section are made, so as to establish the existence and extent of the competition by water, and the net result is that even before this last order of the commission, as a result of which there are now no departures, a very large number of articles upon which there had previously been departures from the fourth section had become adjusted to a basis of rates upon which there were none, and I think it is safe to say that so far as the future is concerned the articles upon which departures from the fourth section will be permitted will be even more limited under these limitations that I have described.

The CHAIRMAN. Was that schedule C established in the percentage order case by the commission, or subsequently to that, on a compromise between the railroads and the shippers?

Mr. WOOD. No; the schedule C application might be regarded a supplementary application in the case in which the percentage order was made. The original applications which were on file at the time of the passage of the act, or just following the passage of the act, did not distinguish as between schedules A, B, and C. They were general following the practice that then prevailed, and the schedule C application was an application, as I say, to meet these very acute conditions of water competition that arose immediately upon the opening of the canal, and that if not technically filed as a supplemental or amendatory application—in fact, became that—and was entitled in the same manner—given the same name in the reports of the commission—and when the order was made it was made as a part of the percentage order, so that there has never been but one order outstanding at a time. It really was made as a modification of the percentage order.

The CHAIRMAN. Now, these classes of business in the section between the intermountain cities and the coast that you described a moment ago, such as local business, and carrying grain from the interior, and the carrying of fruit, for which the ships are not equipped, will all be enjoyed, if that assumption is correct, even though the water lines are in full play of competition?

Mr. WOOD. You mean the railroad companies would get that business?

The CHAIRMAN. Yes; anyhow.

Mr. WOOD. Yes; regardless of the disposition of this question.

The CHAIRMAN. Of course, to just what extent the fruit movement may be competitive no one now knows. It has not been competitive in the past.

Mr. LYON. Senator, may I make a statement in that same connection?

The CHAIRMAN. Yes; if it is not too long, Mr. Lyon.

Mr. LYON. The commission, in administering this schedule A and B, as I remember the decision, left it in the discretion of the carrier to determine when an article in schedule A became an article in schedule B. They did not have to make application to the commission and did not have to make any showing to the commission as to whether it was of such a nature that it was subject to water competition or not.

The CHAIRMAN. That is, between A and B?

Mr. LYON. Between A and B. C was left to the commission for special investigation. B was the option of the carrier, as long as it maintained these percentages; and to show how the law is administered—because I think the question here is one of administration of the law rather than the law itself—I appeared for some of the steamship companies, when a vast number of articles were taken out by the carriers from A and placed in B. I called the matter to the attention of the commission by petition, and the commission refused to suspend the tariff which I asked them to suspend and said that matter would have to be filed by some one who was injured, to wit, some interior point. You understand, I was in a very unfortunate position before the commission, because I represented purely the selfish interests of outside water lines, but it was taking from a business—much of it we showed was not handled by water in any respect and some of it was too expensive to handle by water, and they reduced it from A to B, and I thought you would like to know that.

Further along that line there is another matter I want to call your attention to.

Mr. CAMPBELL. Yes. I want to say, Mr. Lyon, along that line, that Spokane protested time and time again against the taking out of schedule A, in which there was no discrimination, and putting the article into schedule B, and creating discrimination, and the commission refused to suspend, claiming that the railroads had the right to do that without application to the commission.

Mr. LYON. I do not want it understood that I claim the shipping companies had any right before the commission whatever. We simply called it to the attention of the commission as a matter of fact.

Mr. WOOD. I think the Senator should understand that under this new order all such distinctions as schedules A, B, and C are now wiped out, and if we ever get any further relief from the commission under this law it must be on a new application. Now, my understanding of the approval which the commission has given to the suggestions that we have made is that in those two applications we must make a concrete case on the special articles; that there is not going to be any more wholesale rate making under the fourth section on the theory that everything is subject to some degree of water competition, and that, consequently, it is proper to have some basis to which that may all be adjusted.

Mr. LYON. And that is recognized by the commission by the rates that are in effect to the coast. They are not passed upon, but are reasonable rates. They do not violate the fourth section but do violate the third section. They are the same rates as to the interior. In other words, the commission recognizes by allowing these rates that there is an ocean flowing from the Atlantic to the Pacific and some time in the indefinite future there may be boats upon that ocean, and, pending that situation, the carriers have the same right to give the same rates to terminal points that they do to the interior.

Mr. WOOD. There has been so much criticism of the commission that I think it ought to be limited in some respect. As Mr. Lyon very well knows, the commission, under the first section of the law, has nothing at all to say as to whether the railroad companies should raise the rates to the terminal points, cutting the rates to intermediate points. That was not in issue; that under the issues in that case

all that the commission could say was whether or not the fourth-section relief was to be withdrawn or whether it was to be continued. They said it was to be withdrawn. It was then within the province of the carriers to determine whether they would bring the terminal rates to the level of the intermediate and bring the intermediates down to the level of the terminal rates, or whether they would take the intermediate rates and grade them out, making still higher rates to the terminal points.

The carriers, not the commission, in recognition of this situation which Mr. Lyon has described, concluded to do the thing by lifting the terminal rates up to the level of the intermediate rates, and what the commission has decided in this last case is the application of the carriers, under the amended fifteenth section, to make those advances. All the commission could decide on that was whether the making of those proposed advanced rates would result in unreasonably high rates to the terminal points. We had no authority to tell the carriers—they had not gone far enough—that they should, by reason of section 3, make those rates still higher. Nobody knows better than Mr. Lyon that to accomplish that result would require a complaint upon the part of the intermountain communities, which so far has not been brought, so that his criticism of the commission by reason of the present adjustment is altogether uncalled for.

MR. WETTRICK. I wonder if I could proceed with my statement.

THE CHAIRMAN. Yes; I think we will suspend the interrupting of Mr. Wettrick and let him go ahead.

MR. WETTRICK. I want to say, right along the line of the discussion that has taken place, Senator Poindexter, and the other Senators here, that in the administration of any law or statute such as the interstate-commerce act is you would arrive at perfection only after repeated attempts, and it requires constructive effort to remedy a situation and bring it on a basis where everything is just as it ought to be.

Now, from Mr. Wood's statement and other statements which have been made here, it is quite clear that while we might go back into railroad history and show glaring discriminations and wrongs here and there, from which we have suffered as well as other communities, that more or less has been done through processes of law from year to year until we have arrived at a place where, in the sound judgment and discretion of the Interstate Commerce Commission, it may be said that everything is in pretty good shape.

The terminal rates have been advanced to the level of the intermediate rates. In some instances they have been advanced above that, and no discrimination exists now in the transcontinental situation. When water competition again comes back and the carriers find themselves under the necessity of making these lower rates, if it is for the best interests of the carriers and all concerned, why should they not go to the Interstate Commerce Commission and have that expert body, which has been working on these things for years, pass upon these questions and have them exercise their sound judgment and discretion as to what ought to be done?

The wrong that has existed in the past has resulted sometimes from treating these things as a whole. In the decision of last June of the Interstate Commerce Commission it clearly lays down what the car-

riers will be required to show with regard to these different commodities and that permission to depart from the absolute rule of the fourth section will only be granted when it is shown conclusively that a certain rate on a particular commodity is necessary if the railroads are to be permitted to participate in the traffic.

Now, let us all be fair-minded about this and not impeach the judgment of the Interstate Commerce Commission in a matter in which there is really involved the question simply of what is the best way to handle the situation.

The CHAIRMAN. Well, the Interstate Commerce Commission has never had an opportunity to determine the policy, has it? It really has been fixed by statute?

Mr. WETTRICK. Senator, I really do not think that this should be regarded as a question of policy, unless it is put on the broad ground of whether we shall favor steamship lines by adopting a principle under which rail carriers could not meet the water-competitive rate. If there is anything in the present long-and-short-haul clause, or if there are any circumstances under which a carrier should be permitted to depart from an absolute long-and-short-haul clause, then that ought to be left, of course, to a body that investigates all of the facts and decides in the light of that, and I think that is the condition that should continue to exist.

The Interstate Commerce Commission is satisfactory to these gentlemen in every respect in the administration of the first section or the third section. The only thing they complain about is the administration of the fourth section, to such an extent that their argument in substance is that the Interstate Commerce Commission, while all right in every other respect, has not done what they think it should do in this respect, and, therefore, they want you to take all discretion out of their hands in regard to this matter. Otherwise, gentlemen, there certainly would be no reason for us to try over again the trans-continental rate case, when appearing before a committee to discuss a question of principle. We should not be concerned here with the question of whether the relief that a commission granted in one case or another was proper; whether the difference in the rate should have been 15 cents or 30 cents, but we should leave that to the Interstate Commerce Commission. If there is anything to justify the existence of that body, then certainly we must resolve all doubt in connection with such findings as it may make, and such orders as it may enter, in favor of the commission, and not question them, and we should not overturn a law which many believe to be salutary, merely because there are some people who say that it has not been administered as it ought to be. That does not go to the question of whether we shall have an absolute long-and-short-haul clause or not. That is a question of principle, to be determined on other considerations than whether the Interstate Commerce Commission has done what it ought to do.

Mr. SHAUGHNESSY. Mr. Wettrick, how may we for the future be assured of reasonably effective administration of the fourth section by the Interstate Commerce Commission? Will you please explain that?

Mr. WETTRICK. I think you have, Mr. Shaughnessy; I do not think that any of us ought to say that the Interstate Commerce Commission has not acted fairly or honestly about this question. It has not

tain friends will agree with me or not—a rather scientific basis, which I think almost anybody would have to concede if they looked into it; I mean the inequalities that were found were eliminated, and the instances where fourth-section violations existed that should not exist were straightened out until everything, I think, could be said to be in pretty good shape.

Mr. LYON. What change was made by the commission's administration of the fourth section after 1910? When you wanted to violate the fourth section, what principle did the commission fail to apply, that the rules did not apply for 50 years? You stated if they did not state a concrete case—

Mr. WETTRICK. You mean to go over the history again of what was done with these rates?

Mr. LYON. Well, all I want is your opinion as to whether the Interstate Commerce Commission pursued any other course in deciding the exceptions to fourth-section violations than the railroads had pursued during their existence for the last 50 or 75 years? Did not the commission take under consideration identically the same things that the railroads took under consideration, and did not they do it under the instruction of the courts?

Mr. WETTRICK. I would say to a large extent, which is to be expected, because the reasons which impelled the carriers to make the rates were the natural conditions which the commission, when it began to administer the law, found itself constrained to give effect to.

Mr. LYON. Did exactly what the railroads had done.

Mr. WETTRICK. It gave effect to it, but it made this important change, Senator, whereas before 1910 the railroads determined whether or not they would violate the fourth section and to what extent, by the amendment of 1910, the fourth-section violations were declared unlawful, and it was provided that the carriers, where they deemed it necessary that they should make a lower rate for the long haul, might come to the commission and make application for permission to do that, and then the commission, as an expert body, passed upon the question, taking everything into consideration, and decided what was the reasonable and proper thing to do, and what was just and fair for all concerned, regardless of the various claims of competing communities and other interests.

Mr. LYON. Did they not have exactly that same jurisdiction, prior to 1910, with the one sole exception that the carrier decided whether the circumstances and conditions were similar or not, but that when the case was brought to the attention of the commission, the commission sat in judgment and did identically the same thing, prior to 1910, after the rate went into effect that it did subsequent to 1910, upon the application and with practically the same result as it was the same commission, deciding the same issue, under exactly the same circumstances and conditions.

Mr. WOOD. Mr. Lyon, let me ask you a question. You are familiar with the decisions of the commission and the courts. You mean to say as a result of the amended fourth section there are not numerous instances in the Southeast where, under the new powers conferred by the new section, the commission withdrew fourth-section relief to many of the so-called southeastern basing points, to which fourth-section departures had previously existed, over the protest of the Interstate Commerce Commission, and under the law as decided by the Supreme Court?

Mr. LYON. I say they did that, and I say it was the attitude of the Interstate Commerce Commission for 20 years prior to 1910 to have withdrawn exactly the same rates which were published by the carriers, for the circumstances and conditions during that 20 years were the same, and I will say further that the Interstate Commerce Commission granted increases to the fourth section on this very transcontinental business, as evidenced by the 126 class articles, and I say it was its duty to do so under the law, because it had to look through the spectacles that had been provided by the railroads for the last 75 years, and naturally they came to the conclusion that the railroads did, if they were equally honest in the public interest.

Mr. WOOD. Of course it may be a little unfortunate that we have not somebody here from the commission who could speak with more authority about what they have done.

The CHAIRMAN. The commission will be represented here in the hearing.

Mr. WOOD. I want to ask Mr. Lyon, just as I did before, if he does not know that there were instances in the Southeast where departures from the fourth section were continued in the past in connection with which the Interstate Commerce Commission had made orders requiring their removal before the law was amended, which orders were passed by the Supreme Court, and in connection with which, after the law was amended, the carriers were not required by orders of the commission to remove violations of the same character.

Mr. LYON. I can not follow all of your questions, but I will say that the commission has since 1910 not granted all of the applications of the carriers in the Southeast for violations of the fourth section, and, as I said before 1910, upon complaint of citizens, they forced the railroads to withdraw from many violations of the fourth section in the Southeast. I do not mean, Mr. Wood, to reflect upon the commission; I think the commission has complied with the law as they see it.

Mr. WETTRICK. Mr. Lyon's contention is that in his opinion the Interstate Commerce Commission had exactly the same authority prior to 1910 as they did after that. There is, of course, no need of discussing that, because the Interstate Commerce Commission and the Supreme Court differ with Mr. Lyon on that question, so that does not make any particular difference. The fact is that after the 1910 amendment the carriers were required to make these applications, and did make the applications. Now, I have said, in answer to Mr. Lyon's question, that, of course, the commission permitted departures from the fourth section where it did for the same reasons which compelled the carriers to do so. The purpose of the act was to permit the commission to do that, but when Mr. Lyon states that the Interstate Commerce Commission granted fourth-section relief in every instance—

Mr. LYON. I did not so state.

Mr. WETTRICK. And to the same extent that the carriers had voluntarily taken relief before then he is absolutely mistaken, and there is sufficient in this record already to prove that, so that it is not necessary for me to again go over the history of the transcontinental-rate case or other fourth-section cases where the commission denied relief, where the carriers had previously enjoyed it.

Now, shortly after I got started with my discussion we were led off on a tangent by questions that have been asked, which have really controlled the course of the discussion so far, so that I have really not finished stating what advantages we think accrue to the coast cities under a condition which permits the carriers to meet water competition and which I am urging as indicating that we do have an interest in this matter, which we think it is perfectly right for us to seek to protect.

I have referred to the fact that it furnishes us an additional and competitive service; that it opens up to us new markets of supply, and in that connection I want to refer to something that was brought out this morning in connection with some questions that Senator Pomerene asked. He stated that Canton, Ohio, produced a large amount of tonnage. I think he said next to Cleveland, as much as any city in Ohio or any city between Pittsburgh and Chicago, and the Pacific coast and the intermountain territory use largely the commodities there produced. Now, if you enact an absolute long-and-short-haul clause, the effect of that will be that during normal times, when there is water transportation between the two coasts, whatever is produced at Canton or Cleveland or Detroit or Chicago that is also produced on the East coast and may be obtained there will be obtained by the Pacific coast people along the East coast and shipped to the Pacific coast by water transportation, so that the effect of an absolute long-and-short-haul clause, under which the carriers could not meet the water competitive rate, either from New York or from Canton or from Chicago, would be to shift a large part of that business from that interior country to the East coast, and it would move by water to the Pacific coast. Now, what advantage would that be to anyone? It would be of no benefit, certainly, to the intermountain cities who are contending for an absolute long-and-short-haul clause, because if we can bring that stuff to the coast by water, what difference does it make to them whether we buy it in New York and bring it by water, or whether we buy it in Canton and bring it to the Pacific coast by rail?

The CHAIRMAN. Would it not be to the benefit of the workmen that build it and the people that own the ships and make money out of them?

Mr. WETTRICK. The goods would be shipped on the same rates. The only difference is this, that if the rate from Canton to the Pacific coast is held high by an absolute long-and-short-haul clause, then it would be bought in New York and shipped from there at water rates; whereas if the carriers are permitted to make lower rates from Canton, we have the choice of markets of supply, as I said, which brings about competition between the sellers of these articles; and we can enjoy access to those markets of supply without the slightest injury to the intermountain territory.

Mr. MANN. Under the terminal-rate system, the rates from Canton and Youngstown, and so on, and New York and Chicago to the Pacific coast ports will be the same amount per 100 pounds, under the terminal-rate system, generally speaking.

Mr. WETTRICK. They have been.

Mr. MANN. That is the point, of course, that you base your statement on.

Mr. WETTRICK. It is a question of market competition in that instance, exactly. That is to say, the water lines make a certain rate from New York to Seattle on a commodity, we will say, that is produced at Canton, Ohio, as well, and then the rail lines make the same rate from Canton, Ohio, in order that the manufacturer in Canton can get into that territory.

Mr. CAMPBELL. The question Senator Pomerene asked was how he could explain to his people, provided there was something from the West needed, that they were charged more than New York. Take magnesite, now produced in large quantities near Spokane. Suppose that Canton had to pay more for magnesite than New York or Pittsburgh paid. Don't you suppose they would holler?

Mr. MANN. What is that on, eastbound rate?

Mr. CAMPBELL. Yes.

Mr. MANN. There is no such case.

Mr. CAMPBELL. No; but I say supposing the Canton man was charged more from some western point for something he needed than New York, how could he explain it?

Mr. MANN. Mr. Winchell's answer was he should go back to his manufacturers and ask them how they would like the situation by which they would have to pay to the coast more than New York would pay.

Mr. CAMPBELL. Take magnesite. Supposing a Canton manufacturer had to pay more than New York had to pay for magnesite. What do you suppose he would have to say?

Mr. WETTRICK. He might be objecting, just as you are objecting, but the differences in the situation have been fully explained by the carriers, so that I will say, so far as I am concerned, you might well have exactly the same situation where it would be to the interest of your Canton manufacturer to stand for a higher rate on that commodity than to insist on the carriers not being permitted to make a lower rate to meet the water competitive condition farther east.

Mr. CAMPBELL. If he compared the population, Mr. Mann, we would point out to him that the reason their rate structure was not applied in the East was because your eastern intermediate is built up as compared with the West.

Mr. MANN. The territory east of the Mississippi River and north of the Ohio and Potomac has been very aptly called, Mr. Campbell, the "workshop of the United States."

Mr. WETTRICK. So, whatever else may be said about the situation, there is no question but what all of these interior communities—the Middle Western States—are benefited by a condition under which the carriers can make the water competitive rates, and that there would be a shifting of the markets of supply if an absolute long-and-short-haul clause were enacted, and that is borne out by a statement, which I desire to read here, that is taken from the Kansas Citian of February 6, 1917, which is the official publication of the Chamber of Commerce of Kansas City, concerning the bill which the chairman introduced, I think it was a year ago last December:

Subsequently on the opening of the Panama Canal the Interstate Commerce Commission modified its order and granted greater relief from the long-and-short-haul clause in railroad rates to intermountain points as against the coast to permit the railroads to compete with the boats for a share of the traffic to the port cities.

If the Poindexter bill is adopted, and a strict adherence to the long-and-short-haul clause is required, it is clear that one of three situations will prevail in rates to the Pacific coast country. First, the railroads will be required either to level down the intermountain rates to the coast cities basis, thus eliminating the present spread in rates, Missouri River under Mississippi River, Chicago and points east; or, second, the railroads will have to forego the coast cities' business, thus delivering that trade to the Atlantic coast and eliminating the Middle West because of resultant higher rates by way of Gulf ports from Missouri River territory; or, third, a mixed policy on the part of the railroads to continue in such traffic to the coast cities as might be desirable under the long-and-short-haul rule and abandonment of the traffic which does not move in such heavy volume to the coast.

There is a great dissimilarity of traffic moving to and consumed by intermountain territory and that moving to the shipping cities of the coast. In either of these events the entire trans-Mississippi section of the country would be placed in a pocket as compared to the Atlantic seaboard, and the unsatisfactory situation which now exists as to transcontinental rates whereby the different rates in favor of Missouri River have been greatly reduced or eliminated, would be infinitely worse.

It is understood that the Spokane Merchants' Association has sent out an appeal for support of the Poindexter bill, but it is difficult to see how the interior, or Middle West country, can do other than oppose most vigorously the adoption of this bill.

The conditions which obtained prior to the opening of the Panama Canal, and which led Congress to leave discretion in the Interstate Commerce Commission to grant relief from the rule under given circumstances of competition beyond the control of the applicant carrier, or carriers, have, by opening of the canal, been so changed as to warrant greater liberality rather than less.

MR. SHAUGHNESSY. That does not specify the intermountain country.

MR. WETTRICK. Well, I know that it does not, of course, Mr. Shaughnessy; I want to point out—

MR. MANN. Mr. Wettrick, Kansas City is pretty close to Senator Bristow's territory, is it not?

MR. WETTRICK. Yes.

MR. CAMPBELL. It is on the Missouri River, too, is it not?

MR. WETTRICK. I want to point out this fact that at the present time there is no effective water competition between the two coasts which has resulted in the order of the commission and the rates being raised the other day to the level of the highest intermediate rates.

Now, while the present abnormal condition exists, and we are unable to avail ourselves of water transportation, there is no question but what, from a competitive standpoint, the intermountain cities are placed in a much more favorable condition than they have been heretofore, but that condition—that more favorable condition—would not exist, even at the present time, if there were ships in the coast-to-coast service, because we could then avail ourselves of water transportation rates, so that what is going to happen during this time, however long or short it may be, will be no criterion of what will happen in the long run, because whether the railroads will again be permitted to make water-competitive rates or not, water transportation will come back, and the coast cities will be able to avail themselves of water rates; and that leads me to discuss an illustration that was given, where a certain corporation maintained offices in Seattle, and Portland, and Spokane, and mentioned, I think, by Mr. Campbell. They came together a short time ago, we are told, and discussed what they would do in view of the fact that the Pacific coast rates were to be advanced to the level of the

Spokane rates, and quite naturally they decided that Spokane would distribute in an area surrounding that city, to the places where the rate from the east plus the local out equalized the rate to Seattle plus the local out, which naturally had the effect of extending the Spokane territory.

Now, I want to point out in that connection that those gentlemen would have made no such distribution of territory, if the steamships were operating between the two coasts, as they had before. What they would have said to each other would have been that "I guess we will have to ship by water after this, instead of by rail, because the rail rates are not going to be equivalent to water rates in here," and Seattle would have continued and Portland would have continued to do just as much business as before. So I say you always get to the inevitable thing, and that is, that you don't establish manufactories and industries in the interior merely because you deprive the carriers of the right to make water competitive rates, because if an industry can not avail itself of water-competitive rates, it uses the water rates, so that in the nature of things the Pacific coast cities have that advantage which they can not be deprived of. That is the reason why large cities are located on the water. That is the reason why they go there. Suppose even under present conditions an industry looks over the West with a view to establishing itself there. Take Senator Pomerene, who asked the question this morning whether if you were considering establishing a business out in the West, if anybody would expect him to put it at an intermountain point, when this discrimination in rates exists, and the point I wish to make in that connection is that while at the present time, so far as freight rates are concerned, the interior would probably be just as favorable a place to establish that business; that would not be the case under times of water transportation.

Mr. SHAUGHNESSY. Nor at this time either, would it?

Mr. WETTRICK. I said at this time. When there is no water transportation, from the standpoint of freight rates, it would not make so much difference. There are other things, however, which give the coast cities an advantage: that is, we still have ships operating to California now, from Seattle and to the Orient, as well—but I have confined myself in this respect to transcontinental rail rates.

Mr. SHAUGHNESSY. Could our people fairly afford to make any considerable investment—

Mr. WETTRICK. No; I do not think so. I think there are so many natural advantages the coast city has that a manufacturer does not go there. The largest city in the world that is not located on navigable water is Indianapolis, and you know why it is as large as it is.

Mr. SHAUGHNESSY. Then we can not develop in proportion to our resources and energy on the basis of the assurance that we will get a uniform rate for the future, according to your argument.

Mr. WETTRICK. You can develop just in proportion to your resources and your natural advantages, as compared with what the coast cities can do, and no more, and the point that I am making is that even an artificial law which would do what the law which is here proposed would do, would not change that situation, because if Senator Pomerene would now establish a business at Salt Lake, or at Reno, he would know that during normal times, when there is water

competition, even if this law is enacted, there would be lower water rates at the Pacific coast cities, and in the nature of things that it would be more advisable for him to put that business where he can avail himself of the water rates.

Mr. SHAUGHNESSY. We disagree with you on that point, Mr. Wettrick.

Mr. WETTRICK. Well, it seems to me that there can be no question about that. Now, I want to be perfectly understood. I am not gloating over any disadvantage under which the interior cities are. In fact, I will put my appearance here on the broad general ground of the interest of the West and the country. I thoroughly believe that our opposition to the kind of a law that is here proposed is in the interest of the entire country. The natural advantages that we are speaking of here can not be equalized by any law—will not be equalized by any law, and that being the case, what is the use of trying to deprive the coast cities of something which is hurting nobody, when by letting us use it we are actually contributing to its upkeep for you.

Mr. SHAUGHNESSY. Contributing to what?

Mr. WETTRICK. To the upkeep—I mean the transportation facilities upon which you are solely dependent.

Mr. SHAUGHNESSY. But not to the upkeep or the promotion of a merchant marine.

Mr. WETTRICK. I think not the contrary either, because, as I have said before, there is enough leeway between the rates that the rail carriers can make and the rates that the water carriers can make, resulting from the difference in the cost of transportation, that there is no danger of destroying the one with the other.

Mr. SHAUGHNESSY. You would not make that statement on the basis Mr. Spence made here yesterday, would you, that he should be allowed to make the rate the equivalent of the steamship rate and out-of-pocket cost rates?

Mr. WETTRICK. I think I agree with Mr. Spence in what he said.

Mr. SHAUGHNESSY. And the rates being equivalent on both lines, and the railroad, with its superior terminal and transportation facilities, would naturally get a sufficient amount of business to prevent the merchant marine from amounting to any very effective transportation agency, would it not?

Mr. WETTRICK. No; you are pursuing the same questions with me as you did with Mr. Spence. I really thought you had gotten that straightened out. The things you mention there now would of course be taken into consideration in fixing this equivalent, and you will remember he explained to you that by equivalent he did not mean if a steamship rate was \$1 that the rail rate should be \$1, but the rail rate should be as much more than \$1 as takes those things into consideration and brings about an equivalent between the two; then a shipper may have his choice as to whether he will take the one or the other, as if you and I were in the same business, selling the same goods at the same price, how much business would you do and how much business would I do? Nobody knows, and that is the answer which Mr. Spence gave you to the question that you are asking—nobody knows. You establish an equivalent of that kind, and then it is a question of getting after the business.

Mr. SHAUGHNESSY. But the point I make is that under that system of arbitraries, there is no opportunity for the upbuilding of an effective merchant marine.

Mr. WETTRICK. I think there is. I think there is every opportunity.

Mr. LYON. Could I ask a question or two of Mr. Wettrick, if he is through?

The CHAIRMAN. Have you finished?

Mr. WETTRICK. No; I have not finished.

The CHAIRMAN. I think he had better go ahead.

Mr. WETTRICK. What I have said leads me to say something further along the line where the interests of the West, and, in fact, the contending communities here lie, and I want to do so by again stating that I am saying nothing with any particular animus, or any animus at all. I have always accorded to our intermountain friends the belief that they were acting in absolute good faith—have no doubt of that. I am afraid they have not always done the same thing about us, and I am led to that conclusion because of what always is said at a hearing of this kind, along the line of what business we have here, and what we are here for anyhow, but, by way of illustrating what an absolute long-and-short-haul clause means, or would mean, let me refer again to what has happened with transcontinental rates.

Mr. Campbell said when he was making his statement that I had said that the people of Spokane were trying to force up our rates; that that was their purpose. If any newspaper ever quoted me to that effect, it was done in the way that those things are done by newspapers, and I want to make it perfectly clear that I have never said that that was their purpose; that they started out for that, but as I said in answer to something that Judge Bartine asked me, it was quite clear all the time that that was the inevitable result of a demand that the water rates which the carriers had established be eliminated during the present time. Now, then, to whose benefit has that been done? To the carriers, of course, in the first place, because they will get additional revenue out of the business, but the carriers have taken the position that the rates which were in effect to the terminals were no higher than normal times had shown were necessary to meet water competition, and that they should be permitted to continue them. The interior consumer—we don't need to speak of the producer, because he has the same or lower rate as the producer on the Pacific coast, but the consumer is paying the same freight rate on the goods which he consumes as he did before.

Now, if any benefit accrues to any shipper or any of the contending parties, it is the jobber at the interior, and he is benefited only because of a somewhat more favorable relationship in rates which has been established for him. Now, then, it gets to be a question of whether we shall legislate in the interest of the jobber who takes an active part in these matters or whether we shall have in mind as well the producer and the consumer who is not organized, and for that reason does not appear and make himself heard, when hearings of this kind are in progress, and what has happened during the present circumstances will be perpetuated if an absolute long-and-short-haul clause is now adopted. In fact, something more will happen than that. When water competition returns in such force and at such rates as it existed before, and the carriers find that they are

carrying none of this transcontinental water-competitive traffic they must make up the revenue they will lose on that business in some way.

Now, what shall be done under those circumstances? Is it not to the interest of the intermountain cities that under those circumstances the carriers should be permitted to bring their rates within reach of the water rates and make what they can on that traffic? It seems to me there is no other conclusion than that higher rates will have to be charged to intermediate points.

So I say that I think it is to the interest of all of us, if we look at it in the right way, to permit the carriers to meet the forces which exist, and that in a general way, unless the carriers can make what it is possible for them to make on water-competitive rates, there is no question but what rates will have to go up in other respects. There is no telling what under those circumstances might become of the rates on our products. The lumber rate which we enjoy from the Northwest to the East might have to be advanced. The same way with our salmon rate. The same way with the distributive rates out of the cities of the Northwest. If you tie the hands of the carriers, with their facilities and their plants there to do the business on which they can make a profit, it must be made up somewhere else. Now, to permit them to do that does not change the situation; because the coast cities have this advantage anyhow, why should it be done?

There has been considerable discussion throughout these hearings about the manner in which the Interstate Commerce Commission has interpreted, viewed, and applied the amendment of 1910, and because I think the construction put upon it indicates that the commission has taken a view that was entirely proper, I desire to incorporate in the record a paragraph or two from the commission's decisions, the first one being from the Spokane case (21 C. C., p. 412), and that is the decision of 1911, in which the commission first construed the amended section, and as a result of which it established the differentials of 7, 15, and 25 per cent from points east of the Missouri River, being also the case which was carried to the United States Supreme Court and sustained by that body.

The commission says:

Bearing in mind the authority which the commission now administers in prescribing a reasonable rate and in declaring and correcting an undue preference, it seems evident that the purpose of Congress was to commit to this body the duty of determining whether, if the carrier was permitted to charge a higher rate at the intermediate points, that would result in a violation of the provision of the act; but in so doing the commission can not act arbitrarily. It must investigate each case, and if, after such investigation, it is of the opinion that a departure from the rule of the fourth section would not result in unreasonable rates or undue discrimination it must permit that departure. If, on the other hand, it is of the contrary opinion, it must refuse the permission. Such is the only possible construction which can be placed upon this section in connection with the entire act, and if any doubt as to the real purpose of Congress could exist it must effectively be put at rest by an examination of the history of the passage of this measure.

The commission then goes on in this opinion and reviews the history of the act. This opinion was written by Mr. Prouty.

In the Nevada case, decided at the same time, in which the opinion was written by Commissioner Lane, which is reported in 21 I. C. C.,

329, at page 334, under the heading "Purpose of Congress," this appears:

The simple truth is that Congress determined upon strengthening the long-and-short-haul section. Members of Congress representing those portions of our country against which there was the greatest discrimination, presented amendments to the fourth section that would make it rigid, inflexible, absolute. Against these amendments the carriers themselves made protest, that was supported with reason. The commission itself, although the opportunity has frequently been presented to it, has never indorsed a rigid long-and-short-haul section. Indeed, the present provision is drawn along lines which received the tentative approval of the commission; because others who advocated the absolute clause realized that there might be certain circumstances under which such a provision would do grave injustice to the carriers, they yielded to those who were in opposition to such a provision. At the same time, however, they insisted that the long-and-short-haul section should be made more strong, more certain, and more affirmative. It was their complaint that by reason of the construction that had been given to the language "under substantially similar circumstances and conditions," the courts had devitalized this provision of the law and had rendered it of no value, either to the South or the far West, where its provisions were most needed, and the result of this fusion of ideas was the present section, which was supposed to represent two things—the elimination of the words which had by judicial interpretation played, as it was believed, such havoc with the law, and, on the other hand, the stiffening of the fore part of the section, which was its vital portion. In short, Congress intended that the law should say that as a general rule, there should be no lesser charge to the more distant point, but it was not willing to say that there should not be some exceptions to the rule. The railroads, however, were not to make these exceptions themselves. Such exceptions were to be made only upon petition to the commission, upon public justification being shown.

Mr. WETTRICK. That is the interpretation and construction which has governed the commission in applying the act since its amendment.

I also wish to mention this fact, which probably has already been made clear, that all authorities that have ever discussed the long-and-short-haul principle, so far as I have been able to find, approve it and recognize that it is the only proper principle to apply, because of the reasons which exist, so that not only the writers on transportation questions, but all bodies and courts that have had to do with applying the long-and-short-haul law have come to the same conclusion. Noyes, for instance, has been cited, and one of the most prominent writers on railroad matters in this country is Mr. Wyman. In his work on Public Service Corporations, in Volume II, he discusses what he calls "The economic principles involved in long and short hauls," and under that he considers particularly the principle of the law of decreasing cost, as applied to long and short hauls on account of competition. At page 1080, section 1220, under the heading "Economic principles affecting rate-making. Law of decreasing costs," he says:

Economists in dealing with the problem of rate making in public service have been prone to consider chiefly what policies should behoove the managers of the business to follow, in order to get their due return from it most advantageously. It has been pointed out, for example, in all discussions of the railroad problem by economists that the fixed expenses which constitute so considerable a portion of the disbursements by a railroad, are to a very large extent independent of the amount of the traffic it carries. It follows that additional business will always be done at a decreasing relative cost. The net income rises as the business expands, and the law of increasing returns is again demonstrated.

He cites in this connection Noyes on "American Railroad Rates" and refers to a citation from Noyes's work, in which Mr. Ackworth, the noted English authority on railroad transportation, discusses those

same principles and reduces it to a formula, to show how it works out. Mr. Wyman then discusses, in section 1222, competition as a factor:

Much of the disproportion between individual rates existing is explained by the presence or absence of competition. Indeed, this competition is put forward as a justification for making disproportionate rates, upon the ground that the increased business obtained by cutting rates to meet competition reacts favorably upon the whole business by decreasing costs, and it must be admitted that this law of increasing returns may be considered in making rates.

If traffic may be acquired by a specially low rate, which would otherwise be lost, to acquire the traffic would benefit, rather than burden, other traffic of a different kind, since, if under the law of increasing returns it is remunerative, the profits thus earned will tend to diminish the rates charged on the remaining traffic. On this ground competition may be considered as a factor in fixing rates. If a carrier is carrying goods from two stations, at one of which there is competition, the rate at the station where the competition exists may fairly be reduced, so far as is absolutely necessary, to secure the traffic, provided the reduced rate remains a remunerative one under the law of increasing returns. If the rate were not reduced, *ex hypothesi*, the traffic would be lost and the profit realized upon it must be exacted from the non-competitive traffic. If, on the other hand, the rates were reduced equally all over the road, the carrier could not earn a fair return from the whole schedule, since we are assuming that the necessary competitive rate is so low as to be profitable only as a result of the low increasing returns.

And in that connection numerous cases are cited to the effect that competition may justify wholly disproportionate rates between localities. That is, that in the cases cited that principle has been sustained.

Then he discusses, in section 1223, the policy for permitting competitive rates:

The policy of this matter seems to be to permit the making of rates to meet competition, even if proportionately, they seem preferential, in order that competition may be possible, which it could not be without this permission.

He then cites a case in which Lord Herschel discusses the English provision upon this question, the case being entitled *Phipps v. London & Northwestern Railway Co.*, which is reported in 2 Queens Bench, 229, in 1892. I think it would perhaps be well if in that connection I would incorporate the provision of the English law on this question.

THE CHAIRMAN. When was that decision rendered?

MR. WETTRICK. In 1892.

THE CHAIRMAN. Do you know if it has been changed since?

MR. WETTRICK. I understand that it has not, Senator. You will recall that Mr. Spence, or was it Mr. Winchell, referred to the large percentage of traffic in England, or in Great Britain, which is water competitive, and which has forced the recognition of that principle and the application of that principle there to a very large extent. The law in England is not as rigid as our law is here.

THE CHAIRMAN. Well, they have a very large water-borne commerce, the largest in the world, both foreign and domestic, both by sea and by river and canal.

MR. WETTRICK. Yes.

THE CHAIRMAN. England has a network of canals in her industrial district, with heavy water-borne traffic on them, the same as they have in France and Germany.

MR. WETTRICK. Yes; and I take it that between two ports in England, for instance, between which steamships ply, it is on the same principle that we are contending for, absolutely essential that the

railroads should be permitted to engage in the traffic at whatever they can make on it in competition with reasonable water rates, and that it is to their interests that they should be permitted to do so. This provision is found in the English railway and traffic acts of 1888, section 27, paragraph 3, and reads as follows:

The court or the commissioner shall have power to direct that no higher charge shall be made to any person for service in respect of merchandise carried over the less distance than is made to any other person for similar service in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railways.

So that it appears that the situation there is perhaps very much like it was before our amendment of 1910, if not even looser than that. The railroads may do as they please, you can say, but the court or the commissioner enforcing this act may direct that no higher charge shall be made on traffic over the short haul. Unless such direction is given, there is no restriction on the carrier as to what it shall do.

The CHAIRMAN. Have you an extract from Lord Hershel's report?

Mr. WETTRICK. Yes; I was going to cite that now.

Mr. MCCARTHY. As you read that, I did not understand that was the long and short haul clause really. As I understood it, no greater charge was to be made for the same distance.

Mr. WETTRICK. No; that is not the case. Well, in the case to which I referred, Lord Hershel says:

Suppose that to insist on absolutely equal rates would practically exclude one of the two railways from the traffic, it is obvious that this means the public who are in the neighborhood where they can have the benefit of this competition would be prejudiced by any such proceeding.

He seems to take the view there that it would be unfair and unjust, if not illegal, for the people living at the competitive point, if the carrier were deprived of meeting a competitive rate. He then goes on and says:

And further, inasmuch as competition undoubtedly tends to diminution of charge, and the charge of carriage is one which ultimately falls upon the consumer, it is obvious that the public has an interest in the proceedings under this act of Parliament not being so used as to destroy a traffic which can never be secured but by some such reduction of charge, and the destruction of which would be prejudicial to the public, by tending to increase prices.

That is all I have of the decision. I want to say that I have not had time—taken the time—to look up the cases. I have quoted here what Mr. Wyman quotes in the section to which I have referred.

The CHAIRMAN. It would be quite interesting. I thought probably from your citation he dealt with the matter of discriminatory charges between the terminal and the intermediate points.

Mr. WETTRICK. No; there is no direct reference to that. Now, I want to quote just one other thing here from a work on railroad-rate regulation, by Beale and Wyman, second edition, page 699, section 781, "Legal justification of lower long-haul rate":

As a matter of reasonableness, the charge has still to be justified at common law; but this may be done in some cases. If competition is met at one point and not at another, a competitive rate is established at the former point. A railroad whose lines run through the noncompetitive to the competitive point must, at the latter point, either meet the competitive rate or lose all business. It must, of course, give up the business rather than carry it at a loss and throw upon the remaining traffic the burden of supporting the road and also making up the loss, but the competitive rate is ordinarily slightly remunerative.

It yields a net income, though less than is necessary to pay its proportion of the fixed charges. If the business is given up, all the fixed charges must be paid by the traffic at the noncompetitive points. If the competitive rate is met and business obtained, the profit from the business will go to reduce the amount of fixed charges to be paid by the noncompetitive traffic.

As the competitive traffic will not pay its share of the fixed charges, the noncompetitive traffic, having more than its share of the fixed charges to bear, will necessarily pay a rate higher than the competitive rate, in proportion to the distance; and it may well be obliged to pay absolutely a higher rate than the competitive rate for a longer haul. Nevertheless, the rate will be lower than it would be if the railroad did not meet the competitive rate and obtain its share of the business, and, therefore, being the lowest rate which the carrier can charge and obtain fair compensation, it is reasonable at common law.

I want to refer to a commodity which has been mentioned quite frequently, and that is structural iron and steel, for the purpose of illustrating the effect of applying the long and short haul clause to the coast cities as well as to intermediate points, like Spokane. After the opening of the Panama Canal the steamship lines had rates as low as 30 cents on structural iron and steel between the two coasts. It might probably be fair to say that the rate which was finally settled upon, I believe, was 40 cents, although I am not sure about that right now.

However, that rate was so low that the steel began to move from Pittsburgh through New York, paid a rate of 16.9 cents for that haul, and then the water rate through the canal, and then the rail rate from Seattle to Spokane, at a considerably lower combination than the rate direct from Pittsburgh to Spokane. and Mr. Fitzpatrick, of the Union Iron Works in Spokane, testified in the hearing held on this matter that when he found that that situation existed he shipped in that way by water, and in a case some time before that, in which the carriers attempted to advance the rate from Seattle to Spokane on structural iron and steel, which we asked the commission to suspend and which was suspended, Mr. Fitzpatrick was a witness with us in the case, trying to prevent an increase in the rate because—

Mr. MANN. In what rate?

Mr. WETTRICK. In the rate from Seattle to Spokane, because he was interested in using that, as he was then shipping around by water. Now, there you have a situation, Senator, where you can readily see that the carriers either had to do something with their rates, not only to Seattle but to Spokane, if they were going to continue to haul any part of that traffic.

The CHAIRMAN. That something would have been a lowering of the rate, would it not?

Mr. WETTRICK. Yes.

The CHAIRMAN. Would not that have been beneficial to the general public in that country?

Mr. WETTRICK. Yes; that is why I say it, and that is just what was done.

The CHAIRMAN. That was the result of water competition, was it not?

Mr. WETTRICK. Yes, sir; the result of water competition.

The CHAIRMAN. Then, the water competition would be a good thing for the country.

Mr. WETTRICK. Oh, yes, sir; certainly. I do not want anyone to understand that I have any ideas to the contrary. As I said yester-

day, there is such a great difference between the rates that the one and the other can make that there is no danger of having no ships, because the railroads are permitted to make water competitive rates under the principles the Interstate Commerce Commission has been applying.

The CHAIRMAN. Have you any data as to established lines of ships plying between Seattle and ports on the Atlantic coast?

Mr. WETTRICK. Now?

The CHAIRMAN. At any time.

Mr. WETTRICK. I stated yesterday that there were 49 ships in the service.

The CHAIRMAN. In what service.

Mr. WETTRICK. In the coast-to-coast service, through the canal, after the opening of the Panama Canal.

The CHAIRMAN. Well, were those 49 ships on a regular run between Seattle and the Pacific coast?

Mr. WETTRICK. Not Seattle alone.

The CHAIRMAN. I do not mean Seattle alone, but between Seattle and the Atlantic coast. They might have stopped at many other ports.

Mr. WETTRICK. Yes, sir; they were.

The CHAIRMAN. It is quite surprising to me if they were. I knew there was quite a flaring up of ship transportation when the canal was opened as a free canal, as it ought to have been, being built with American money. It disappeared pretty soon for some reason; and I remember a railroad man, president of one of the transcontinental companies, gave out an interview at San Francisco, in which he expressed a sort of panicky feeling, of a sense of alarm over the prospect of the boats taking all of the business away from the railroads, and that it was a great crisis in transportation matters, and something had to be done. I remember there was a rate quoted about that time of 30 cents a box on apples. We thought we were going to get the benefit of that, but it was just a figment, like a mirage in the desert. It was just offered, and through the activities of some one some arrangements were made by which it never materialized. The apple growers struggled along with their orchards, and had this prospect of benefit from the canal, and never realized it, but there was for a little while activity. But the impression that I got—and you will pardon me for interrupting you here in this way—the impression that I have always had in going to Seattle—and I have been there a great deal—is the absolute failure to develop its maritime possibilities. Lately, since the war started, there are Japanese ships and some foreign commerce there. I think Mr. Hill had two ships operating to the Orient for a while; but there is a great harbor, one of the greatest in the world, and a city that ought to be one of the great cities of the world, with practically no ships in its harbor, and it has always been the case.

Mr. WETTRICK. No; I beg to differ with you on that, Senator. So far as terminal facilities are concerned, of course, you know that long before the war commenced the port commission was created, and up to the present time we have spent some six to eight million dollars in establishing terminal facilities, and the American-Hawaiian Steamship Co. had leased the dock from the port commission and had as many as 27 or 28 ships in the coast-to-coast service.

The CHAIRMAN. Those ships I am quite familiar with. I had the privilege of hearing last fall, in Honolulu, from Mr. Bishop, president of one of the sugar factories there and one of the leading business men in Honolulu, one of the finest speeches I ever heard made by anybody. He spoke at some dinner there, and a part of his speech was a history of the development of the American-Hawaiian line. It was developed on the sugar of Hawaii.

Mr. WETTRICK. But the sugar of Hawaii was a very small percentage of the business which it was carrying at the time.

Mr. MANN. The sugar from Hawaii is all eastbound, Mr. Wettrick, is it not?

Mr. WETTRICK. Yes, sir.

Mr. MANN. While there was a million tons moved through the canal after the canal was opened in 1914, for one year, westbound, none of which was sugar.

Mr. WETTRICK. The facts which the Interstate Commerce Commission has repeatedly found, and which no one will deny, must convince anyone that water competition between the two coasts—steamship service between the two coasts—was regular and of very large tonnage, and not only that, but that it was before the canal opened up. The American-Hawaiian Steamship Co. operated across the Isthmus over the Tehautepec route and maintained rates which were somewhat higher than the rates that were established through the canal afterwards, but Mr. Jackson, of that company, at the first hearing that we had after the canal was closed the steamships had gone into the foreign service—before the commission—admitted that their rates had been remunerative all the time; that they made good money on them, and that they not only built up their fleet with money that they made, but made up surpluses, and the decision of the commission of January 29, 1915—that is the decision on the question of whether the carriers should be permitted to make lower rates on the schedule C commodities without bringing themselves within the percentage relationship fixed back in 1911 clearly shows what the facts were. The canal had been opened, and the commission went very thoroughly into the facts as to water competition, and in that opinion, on page 629 and several pages following, it discusses this question. It says, for instance, that since the opening of the Panama Canal the water carriers have materially reduced their rates, shortened the time of transportation, increased the frequency of sailings, added to their tonnage capacity, and greatly added to the tonnage secured of this coast-to-coast freight. Then it is stated that it was shown that there were in service between the Atlantic and the Pacific coasts 49 ships, with a tonnage capacity of over 380,000 tons, and they set out the ships, showing that they were owned—showing that the American-Hawaiian Steamship Co. had 26 vessels; the Luckenbach-Steamship Co., 8; Grace & Co., 4; the Emory Steamship Co., 9; Swain & Hoyt, 3; Sudden & Christianson, 6.

The CHAIRMAN. Had them where?

Mr. WETTRICK. In the coast-to-coast service.

Mr. MANN. Through the canal?

Mr. WETTRICK. Through the canal; not all of them, necessarily, operating to Seattle, but they were in the coast-to-coast service.

Now, Mr. Spence went into this matter quite fully, and in this same opinion it is shown, for instance—and this has been mentioned—

The CHAIRMAN. I will say right there that I would like to interpolate another impression that I have gotten very vividly, which comes from statements I have heard here at various times from representatives of the coast. I think I remember hearing a speech by Mr. Julius Kahn, of San Francisco, some years ago, in which he described the water commerce of the Pacific as being in a state of paralysis. He was a very eloquent speaker. I remember he pictured the rotting ships, as he termed it, at the wharves at San Francisco. The whole picture was a picture of a dead commerce instead of an active one.

Mr. WETTRICK. May I ask when that was, Senator?

The CHAIRMAN. Well, that was some six or seven years ago.

Mr. MANN. That would refer to foreign commerce, and not to intercoastal commerce. You see the intercoastal commerce, Senator, has been protected, up to quite recently, by the provisions of the United States statute, that vessels of foreign register may not engage in it, which thus gave to the American ships the monopoly of that business. Only recently and since the war they have opened it to ships of foreign register. Now, as to foreign trade, that has been true. That is to say, the American merchant marine has been depleted, as we know, from time to time, since, we may say, almost 1846, and the people that were speaking on that subject were really directing their attention, as I understand it, to a large number of restrictive laws and legislation of a character making it economically impossible for American vessels to engage in foreign trade, as against such vessels of Norway, Sweden, England, Germany, France, and so on. So the fact was that while England had 4,000 ships engaged in what is called the over-sea commerce, Germany some 2,000, France some 1,500, the United States had only 12, but that did not affect the commerce between the coasts. That was protected against the competition of these foreign vessels by this law.

Mr. WETTRICK. I think it is entirely true and safe to say that within the last seven or eight years, there have not been any ships in the ports of the Pacific that could not get business in the coast-to-coast trade. In fact, as I said yesterday, water competition became stronger from year to year during that period. By that I mean that it became stronger by the reduction in rates made as the result of the competition between the various steamship companies, and if anything, because of the length of time required for the railroads to get permission to depart from the fourth section, they were always rather behind in meeting that competition—were unable to keep up.

Now, in this same decision of the commission it says, for instance, that of the commodities shown in schedule C 961,768 tons moved from transcontinental territories A and B to the Pacific coast during the calendar year 1913. Of those 422,359 tons, or approximately 44 per cent, moved by water and 539,409 tons, or 56 per cent, by rail. Now, that was schedule C commodities, commodities on which the commission was considering whether the carriers should be permitted to make lower rates to meet the reduced rates made after the opening of the canal. Nearly a million tons of that moved from the eastern part of the United States, east of the Pittsburgh-Buffalo line, to the Pacific coast in 1913, and almost half of it was carried by the steamship lines when they were operating on the Tehauntepec route in competition with the carriers.

The CHAIRMAN. Does that include the Hawaiian commerce?

Mr. WETTRICK. It does not include the Hawaiian commerce.

Mr. MANN. One million tons was entirely westbound.

Mr. WETTRICK. That was westbound traffic.

The CHAIRMAN. I mean westbound traffic to Hawaii. Does it include that?

Mr. WETTRICK. No; I do not think it does. It says that it moved to the Pacific coast during the calendar year.

The CHAIRMAN. Well, sometimes the Pacific coast is used as including the Hawaiian Islands. I do not know whether they used it there in that sense or not.

Mr. WETTRICK. There is a later statement here which clears that up. On page 621 the commission says it was shown that the total tonnage moving by water from the Atlantic to the Pacific coast, and to the Hawaiian Islands for the year 1911, was 397,974 tons. For 1912, 451,582 tons; for 1913, 434,115 tons. Now, that figure is only slightly higher than the tonnage that I have previously stated it was found that the steamships carried during the same year to the Pacific coast, which would indicate that the Hawaiian traffic or tonnage was, after all, a relatively small part. It is, in round numbers, 422,000 tons, as against 434,000 tons, and then the commission states here that for the month of September, the first full month after the opening of the Panama Canal, the tonnage from the Atlantic coast to the American Pacific coast ports, was 77,915 tons.

Mr. MANN. That is for what month?

Mr. WETTRICK. For the month of September, the first full month after the canal was opened, and the commission says that while the movement via the Panama route for a month may not be a reliable index as to what may be expected as a result of a year's operation it is indicative of a greatly increased activity on the part of the water carriers.

Mr. MANN. But, Mr. Wettrick, we did get the figures from the Panama Canal reports, of the actual movement from the Atlantic coast to the Pacific coast, did we not, for that year?

Mr. WETTRICK. Yes; and that is already in the record, Mr. Spence stated. I do not know now—

Mr. MANN. Well, it amounted to upwards of a million tons.

Mr. WETTRICK. It was, I think, slightly over a million tons, was it not, Mr. Wood?

Mr. WOOD. All told, slightly over a million tons, and under these schedule C commodities, slightly under a million tons during the year, and this figure giving the tonnage for the month of September which Mr. Wettrick has read, of course, was the only figure we had of them, but as it afterwards turned out, that represented accurately one-twelfth of the tonnage that actually did move of westbound traffic during the ensuing 12 months, so that it represented a fair average. It was an index of what actually happened.

The CHAIRMAN. About one-twelfth, you say?

Mr. WOOD. Yes, sir; that movement was relatively constant. Of course there were some fluctuations.

Mr. WETTRICK. The commission then, after reviewing all of this tonnage and the fact that the steamship lines are reaching into the interior, and giving the illustrations that Mr. Spence referred to in

his statement—for instance, 15,000 tons of wrought-iron pipe from Youngstown, Ohio, etc., says:

It is evident from the whole record that whatever may have been the degree of competition in the past between the rail carriers and the water carriers as to the rates on these articles, concerning which this relief is now sought, we are witnessing the beginning of a new era in transportation between the Atlantic and the Pacific coast. To secure any considerable percentage of this coast-to-coast traffic, rates on many commodities must be established by the rail lines materially lower than those now existing.

And when the steamship companies left this coast-to-coast service it was not with the intention of leaving permanently. The advertisements of the American-Hawaiian Line indicated that they regarded their leaving this service as merely temporary, and that in due time—no one knew how long the war would last—they would return to it, and I doubt if they would have left the service, even as soon as they did, if it had not been for the slide in the canal, which, however, did not last very long. The canal was opened up again for operation on, I think, the 15th of April, 1916; and while I am on this I would like to read this from the Interstate Commerce Commission on the question of what might be or should be the policy, so far as a consideration of the steamship companies and the use of the canal as against the use of the railroads is concerned.

The commission says:

It has been suggested that the construction of the Panama Canal by the Government of the United States is indicative of a governmental policy to secure all of this coast-to-coast business for the water lines and that no adjustment of rates by the rail lines should be permitted which will take away traffic from the ocean carriers which normally might be carried by them. This suggestion, however, loses force under the consideration that the Panama Canal is but one of the agencies of transportation that the Government of the United States has fostered between the Atlantic coast and the Pacific. The Government has, from the beginning of railroad construction in the United States, encouraged their construction and operation by private capital and enterprise. Some of these transcontinental roads would not have been constructed had it not been for the aid that the Government extended to them at the time of their construction. As we view it, the Panama Canal is to be one of the agencies of transportation between the East and the West, but not necessarily the sole carrier of the coast-to-coast business. If the railroads are able to make such rates from the Atlantic coast to the Pacific coast as will hold for their lines some portion of this traffic with profit to themselves, they should be permitted so to do. The acceptance of this traffic will add something to their net revenues and to that extent decrease and not increase the burdens that must be borne by other traffic. It will also give the shippers at the coast points the benefits of an additional and competitive service.

That is in the same case to which I have referred, beginning on page 621, and in the decision last June, where the commission ordered all discrimination removed, because of the present conditions, it quotes again what I have just quoted, and in that connection it says this:

The arguments advanced by the representatives of the steamship lines and by some, but by no means all of the representatives of the intermediate territory urge that the policy of the commission, hitherto constantly followed, of allowing the rail carriers to reduce their rates to water competitive points * * * is against the public interest, because it tends to reduce the profits of the water carriers and the number of ships which would otherwise engage in the traffic.

Then they quote what I just quoted a moment ago and continue:

The argument advanced by the water lines if carried to its logical conclusion means in effect that all traffic which may be hauled by water should be re-

served for their exclusive handling. The rail carriers can not maintain, under ordinary circumstances, a level of rates between the Atlantic and the Pacific coasts, between the North Atlantic ports and ports on the South Atlantic or Gulf coast, or between points on the Pacific coast that will be successful in securing any considerable amount of traffic in competition with water carriers without fourth section relief. We are of the opinion that the best interests of the public, the transcontinental carriers, and these intermountain cities in particular will be served by a policy that permits the transcontinental carriers to share with the water lines in the traffic to and from the Pacific coast ports.

The lower rates to the ports, when necessary, must not be lower than competition of the boats makes necessary, and must be high enough to cover, and that by a safe margin, actual out-of-pocket cost of securing and handling the traffic. The shippers at the coast are thereby given the benefit of competing routes and competing markets of supplies. The railroads are able to fill up their trains with traffic, which, although not highly profitable, yields a revenue materially greater than the out-of-pocket cost of securing and handling the traffic, thereby adding to the net revenues of the carriers and to that extent lightening the transportation burden borne by other localities.

The transcontinental railroads can fairly expect such consideration as will permit them to continue to earn a reasonable return upon their property devoted to public use. If governmental control is so exercised as to prevent them from securing any considerable share of the business to and from the terminals and the largest possible return therefrom, such return must be derived from the other communities along their lines.

And a little later they say:

The situation, however, is one which these carriers can not control. The advantage enjoyed by these Pacific coast cities is in the long run a permanent advantage.

Now, in that connection, I think it would be well to mention, as I am sure it is well understood by the committee, that the railroads are not permitted to own competing steamship lines when it is not in the public interest—lines operated through the Panama Canal.

Mr. MANN. That was enacted in the so-called Panama Canal act, was it not, Mr. Wettrick?

Mr. WETTRICK. Yes; the purpose of that being to prevent them from doing as in years gone by was done by the ownership of ships on the part of the railroads.

Now, Mr. Lyon says he could see no reason at all for that law prohibiting the carriers from owning steamships, if you are going to permit them to make low rates to meet water competition, intimating that if you are going to let the railroads drive out the steamships in one way, you might just as well do it in another; but Mr. Lyon did not permit his mind to wander far enough on that question, because the railroads can make the rates to the terminals only if they are permitted to do so by the Interstate Commerce Commission, so that they are restricted in that respect. They have no free hand as they used to have when they owned the steamships. In other words, they can not own steamships now that will compete with the steamship lines. The Interstate Commerce Commission is here to see that they make no lower rates than necessary to fairly compete with the water lines. Under these circumstances you no longer have a condition where the rail lines can drive the water lines out of business, and the history under these laws has clearly demonstrated that that is now the situation.

I want to mention also what the chairman suggested I might state when I made my statement, and that is what cities on the Pacific coast are now enjoying—terminal rates.

Mr. MANN. Not now, but which——

Mr. WETTRICK. Yes; I mean have been regarded as ports of call and enjoyed terminal rates up to the time when the rates were equalized. When the commission rendered its first decision on schedule C commodities, in January, 1915, the record before it did not show all of the cities that might be regarded as, or were, ports of call for steamships between the two coasts, and the commission, therefore, stated that no evidence had been presented to show the necessity of applying the coast terminal rates to any points except those which were ports of call, and in its order designated those points as San Diego, Wilmington, East Wilmington, San Pedro, San Francisco, Oakland, Portland, Tacoma, and Seattle.

The CHAIRMAN. Where is Wilmington and East Wilmington?

Mr. MANN. Those are two interior ports on the same indentation from the sea, which is known better as San Pedro, and in the neighborhood of Los Angeles, 23 miles from Los Angeles. You have San Pedro, and then further in, in the same little harbor, are the ports of Wilmington and East Wilmington, and they are mentioned in this decision, I imagine, out of excessive caution.

The CHAIRMAN. They are not on the Los Angeles River?

Mr. MANN. No, sir; they are on the indentation from the sea sometimes known as Los Angeles Harbor.

Mr. WETTRICK. Now, as I said, there had been quite a number of other cities which had enjoyed these terminal rates; and in another decision on that matter, rendered in April of the same year, the other cities appeared and showed that they were ports of call, and the commission then said that at the time the testimony was taken the canal had been opened only a few weeks and the record then showed the delivery of this freight only at certain points. Proof was then offered showing the delivery of this freight at East San Pedro; Astoria, Oreg.; Vancouver, Bellingham, South Bellingham, Everett, Aberdeen, Hoquiam, and Cosmopolis, Wash.; and the carriers were therefore authorized to apply terminal rates to these points. This is another indication of the purpose of the commission to permit violations of the fourth section only where all of the things that have been mentioned are shown; that is, that there is this actual water competition. It has been mentioned, for instance, that a number of cities a little way back from the coast, in California, have enjoyed terminal rates which they do no longer enjoy, and this indication of the commission to authorize the carriers to make water competitive rates only where——

The CHAIRMAN. Why did they make that change?

Mr. WETTRICK. Why did they make that change?

The CHAIRMAN. Yes.

Mr. WETTRICK. Because the law requires it.

The CHAIRMAN. The law has not been changed in that regard since 1910, has it?

Mr. WETTRICK. No; but, as has been stated here, it took some time to work out all of these different things, and this decision here, or the question of interior terminal rates in connection with the California cities, was involved in a Supreme Court proceeding with which I am not very familiar. My point there simply is this: That in a progressive way, and I think as rapidly as could reasonably be expected, the commission corrected the situation, and it has gotten to

the place where, as I say, I do not think anyone could make any complaint or charge that violations are permitted, except where all of the requirements of the act and the principles which the Interstate Commerce Commission has laid down as governing it are shown to exist.

Mr. CAMPBELL. May I interrupt there just a moment, not to ask you a question, but to clear up what I think has gotten to be a wrong impression. I think the impression has gotten among at least some of the people around the table that we are criticizing the Interstate Commerce Commission. Now, that is not the case. We have not criticized the Interstate Commerce Commission. We are criticizing the law. We say that because the way the law has been interpreted—not criticizing the Interstate Commerce Commission in interpreting the law, but the way it has been applied, we think public policy now demands that the law be changed and we are not here criticizing the Interstate Commerce Commission for interpreting or applying the law as it now stands, but as a matter of public policy we think it should be changed.

Mr. WETTRICK. I had not finished the point I wanted to make when I referred to the structural iron and steel which moved through the canal. I stated that the Union Iron Works, of Spokane, availed itself of the cheaper water rates, although a rail rate was paid at each end. Now, when the carriers found that the iron and steel was moving in that way between Pittsburgh and Spokane, could anyone say that it would not have been proper for them to reduce their rates to Spokane, in order to meet reflected water competition at that place? I do not think so, and if they had done so without reducing their rates at intermediate points farther east, it seems to me it would have been entirely proper, and no one would have been injured.

The fact of the matter is, Senator, that numerous rates to Spokane have been reduced by the force of water competition at that point. Its force, of course, is lessened over what it is at the Pacific coast, just to the extent of the local back, and there you come to the principle of the rate at the intermediate point being made the rate at the coast, plus the local back, and when rates are based on that principle, then each point that is near enough the ocean to come within the influence of water competition gets a reduction in rates from it.

Now, the carriers found themselves compelled to reduce the rates on structural iron and steel to the Pacific coast, and they also reduced their rates to Spokane, so that Mr. Fitzpatrick found it to his advantage again to ship over the rail lines. Now, certainly no one was injured by the railroads making a water-competitive rate, either at Seattle or Spokane. In fact, if they made something on that traffic, they were just that much better off than they would otherwise have been and had that much less to make up on other traffic, and what is true of structural iron and steel is true of numerous other commodities.

Mr. MCCARTHY. You named two factors of that rate. What was the rate from Seattle back to Spokane?

Mr. WETTRICK. Thirty cents.

Mr. MCCARTHY. That would be 86.9 cents through?

Mr. WETTRICK. I think I have covered about everything that I had in mind, and in conclusion I would like to say this, with all due cour-

tesy and respect: I have stated that it would seem that a matter of such importance as this is to the entire country—because this is as broad as the country—it does not involve the transcontinental situation only, but the question applies wherever you have a long line of road competing with a short line—should not be determined now. It would undoubtedly be a very revolutionary and far-reaching matter if such a law were enacted at this time. Now, it must be clear to everyone, it seems to me, that there are circumstances, whatever we may think of the way the Interstate Commerce Commission has administered the law, under which there must be a departure from the fourth section. The fact of the matter is that many of our intermountain friends recognize that, and at one stage or another of these proceedings so stated. Mr. Lyon admits the principle is right and states that it is proper to apply it in the case of a circuitous rail line meeting a more direct line.

Mr. LYON. Where do you get that information?

Mr. WETTRICK. Your testimony is to that effect.

Mr. LYON. I was asked to provide a bill that would meet the interests I speak for here—the water lines. I have not passed upon the other points.

Mr. WETTRICK. Well, you were asked in your testimony whether you thought it was all right for an indirect rail line to meet a direct rail line, and unless I am mistaken or misunderstood you, you said yes, and you also said—

Mr. LYON. I did not know I had spoken about it, that was all.

Mr. WETTRICK. That is your view, is it not?

Mr. LYON. I will be perfectly frank with you. I am very much in doubt about the desirability. I incline that way. If you could find anybody that would administer the law properly—I mean not properly, but according to my notion of it—I might be in favor of it, but the way it has been administered, it becomes a question of whether or not it is best in the long run or not. That is all I meant. Administration of the law is a difficult thing, Mr. Wettrick.

Mr. WETTRICK. Well, I understand that that is your idea, but now I am firmly of this opinion in that connection that you should not control a situation like that by a hard-and-fast law; really, if there is anything in connection with railroad transportation in this country that requires flexibility in its application it is the application of this question, and it would be a very serious thing if a law were enacted which would absolutely provide that it could not be done under any circumstances. It seems to me that we should leave the law in a flexible condition and permit the Interstate Commerce Commission, if we have faith and confidence in it, to continue to administer the fourth section in the way that it has done.

And that leads me to say this: That I do not think that this is the time when this question should be considered. The grounds on which the objection of the intermountain cities, who are the only ones actively forcing the issue now, have been made have been removed, and there are no discriminations in the transcontinental situation. We do not know what the railroad policy is going to be after the war. I understand that the chairman favors Government ownership, and so stated, I believe, in his speech on the railroad bill. Now, what is the use of spending any time on this question at this time or considering the enactment of such a law?

In my opinion it would be very serious interference with the present control of these matters by the Government, because it would at once force a readjustment, as compared to which many of the questions that the Director General is now dealing with are insignificant. So I think that the determination of what is to be done about this question should have been permitted, and should now be permitted, to rest until consideration is given after the war as to what the permanent railroad policy shall be, and I say that partly for this reason: Nowadays nothing is natural or normal. We are all and have been just as busy as we could possibly be trying to adjust ourselves to the changed order of things. It was almost impossible to come here and take the time necessary to discuss this legislation at this time, particularly not on the one week's notice that we had out on the Pacific coast, and it seems to me that our friends on the other side, as well as ourselves, could be spending our time to much better advantage now than in discussing a question which is really a moot question at this time. I say that in all respect, and I do hope this, that whatever opinion anyone may have upon this question that the result of these proceedings will be to at least demonstrate that the question is of sufficient importance, and that the result of what we are considering will be so far-reaching and so revolutionary that the determination of what shall be done should await times other than these, when they can receive the consideration that a question like this is entitled to.

I want to thank the committee for indulging me as representing some of the Pacific coast interests, to the extent that they have, and I say that because of the doubt that has been expressed by our friends as to whether we have any interest in the matter or not.

Senator MYERS. Mr. Wettrick, I have occurring to me a few questions that I would like to ask some one who is opposed to the bill, and I would just as leave ask them of you as anyone. I think you would answer them quite as illuminatingly as anyone. If, in ordinary times, when we are not engaged in war and when the ships are not taken out of the coastwise trade, if the rate on a commodity from the vicinity of the Atlantic coast points to Spokane is \$1.40, and ships are carrying to Seattle for, we will say, for instance, \$1 or a little less, perhaps—about \$1, maybe a little less, and the Interstate Commerce Commission permits the railroads to carry to Seattle for, we will say, \$1—about the same price as the ship rate or maybe a trifle more, on account of more speed of transit by railroad, but what would be deemed an equivalent rate, and we will say that on that equivalent rate the railroads get maybe half of the business or maybe 60 or maybe 40 per cent, but I will say 50 per cent for an illustrative point, so that we have a rate from the Atlantic coast to Spokane of \$1.40, a railroad rate to Seattle of \$1, and the shipping rate of about \$1—maybe a little less, and that on that state of facts the railroads get, first, half of the business to Seattle, the ships get the other half, according to the preference of the shippers, do you think that if the railroad rates were made, I will say, for instance, to Spokane and Seattle each alike, \$1.25, that the railroad would still continue to get some of the Seattle business, not so much of it, but some of it—say 25 per cent of it instead of 50 per cent of it?

What would be your idea of that? Say that the railroad might get less business to Seattle, but charge more for it, and charge a little

less for Spokane, too. Do you think they would get a probability of such a result as that?

Mr. WETTRICK. Some business might be handled under the arrangement that you state, though, of course, you realize that it is impossible to say what would be done under those circumstances. If the \$1 rate by rail is a fair equivalent of the water rate, on which you would split fifty-fifty, then I doubt very much that anyone being able to ship by water would pay 25 cents a hundred more and ship by rail. There might be circumstances under which that would be done, if it were needed in shorter time and transportation by rail would be quicker, and some other consideration might govern or control, but on a commodity with a rate of \$1, 25 cents ordinarily would be enough of a difference to throw it to the water.

Senator MYERS. Of course railroad transportation I speak of is generally much more expeditious than water transportation.

Mr. WETTRICK. Well, it is perhaps more expeditious, but not so very much more when the sailing time for vessels between the two coasts was 22 days, as it was after the opening of the Panama Canal. But there would, of course, be other things that would have something to do with that, and that would be the point of origin, maybe, and the terms that a shipper might get with the party from whom he buys in the particular market where he is, and everything of that kind.

Senator MYERS. You think as a general rule, then, that if the railroad rates to the Pacific coast were anything substantially more than an equivalent of the shipping rate that it would drive the railroads out of the Pacific coast trade? They would have to give it up substantially altogether—get none of it to speak of?

Mr. WETTRICK. The past has demonstrated, and that is undoubtedly a result of the conditions which exist. The greater the difference between the rates the less that would move by rail. I think that may be safely said.

Senator MYERS. If the railroad rates were such as to cause the railroad to have to practically give up the Pacific coast business, do you think in that event the shipping companies would raise their rates to Seattle and other Pacific coast points?

Mr. WETTRICK. Yes; I do, Senator Myers. That would be the tendency. Of course it is impossible to say what the competition between the steamships themselves would be. If the steamship lines could get together in a combination or gentlemen's agreement or something of that kind, the tendency would undoubtedly be to get as high rates and get the business as they possibly could, so that if competition between the steamship lines themselves would not force down the rates it might result in higher steamship rates to the coast cities if the railroads were not a competitive factor; that is, the steamship rates might be made just as much lower as the rail rates were as is necessary to get the business.

Senator MYERS. Is there any power to govern that in the Interstate Commerce Commission, or the Shipping Board, or any agency of the Government as to coastwise ships? Is there anything to prevent them from doing that?

Mr. WETTRICK. What power the Shipping Board has is really not very clear to me, I want to say frankly. There has been no occasion

to pay very much attention to that, because that body has been busy with things having to do with war emergencies and really has not paid any attention, hardly, to the regulating features of the act, but that could, undoubtedly—if the present law would not meet the situation, it could undoubtedly be made to meet the situation.

Senator MYERS. I am not very familiar, myself, with the powers.

Mr. WOOD. The Shipping Board has the power, Senator, to make a maximum rate, and the Interstate Commerce Commission has no jurisdiction.

Senator MYERS. No; I suppose not.

Mr. LYON. The Interstate Commerce Commission only has power to make rates lower.

Senator MYERS. So I apprehend. Now, if rates do enter in—if the railroads are required to make more than an equivalent rate to Pacific coast points—more than a fair equivalent of shipping rates, and they have to give up all of the Pacific coast business—we know, of course, that railroads have to have a certain amount of money to pay operating expenses and interest and dividends, and I believe it is the disposition of both the Interstate Commerce Commission and Congress to give it to them, to see that they get it, in one way or another. Now, if they have to give up by act of Congress all of the Pacific coast business, then they would inevitably have to raise their rates to intermediate points, I take it. Now, if those intermediate points should bring that on themselves by their agitation and at their request, they would have no cause for complaint, would they, having brought it on by their own course? A man has no right to complain of that which he brings on himself, has he?

Mr. WETTRICK. Of course, they would have no right to complain, Senator, but so far as our interest is concerned in that matter, if you have that in mind—

Senator MYERS. Well, I am asking further about the intermediate points. The railroads would have no cause for complaint, would they, because they would be getting their money just the same, would they not?

Mr. WETTRICK. Yes, sir.

Senator MYERS. They would have no cause for complaint, but I suppose that the people of Seattle would feel that they had a cause for complaint, because they were deprived of competitive trade, or competitive efforts of transportation. You would be deprived of one when you now have two competitive lines of traffic.

Mr. WETTRICK. Yes.

Senator MYERS. Thrown back on the ships alone.

Mr. WETTRICK. Yes; with all of the results that follow from that. In other words, I would say about that, Senator, that while these intermountain cities might be inviting what is detrimental to them, inasmuch as it would also be detrimental to us, why, of course, we are opposing the doing of that thing, and I do think, Senator, that if an absolute long-and-short-haul clause is enacted, what you have just stated will be demonstrated, and I am going to venture the prediction that those who are now making the objection that is being made, will be the first to feel that they have been injured, if an absolute long-and-short-haul clause is exacted. We will be deprived of this additional competitive service, with what that means, but during normal

times, we will have, of course, the water rates. Now, that result would not follow as long as there is no water competition, because the factor that is the whole cause of this discussion, does not now exist, and the times are abnormal, but I think we would all very soon come to the conclusion that a mistake had been made when normal conditions return.

Senator MYERS. That is all I wanted to ask.

Mr. BARTINE. Mr. Wettrick, before you leave the stand may I ask one question along the line of Senator Myers' queries? Is not your objection to any such adjustment as the Senator has suggested due to the fact that it would deprive the coast cities of commercial advantage which is now possessed over the interior?

Mr. WETTRICK. Well, when you added "over the interior" that brings you to the question of the advantage we have, resulting from more favorable relationship in rates. That is what you have in mind, is it, Judge?

Mr. BARTINE. Yes.

Mr. WETTRICK. Well, of course, I could answer your question by repeating what I have said so often, that if we are deprived of competitive rail rates—you see, don't you, Judge, by this time—that we would still be getting our goods at water rates, and in the nature of things, we have that relative advantage over the intermountain cities.

Mr. BARTINE. Yes; I am perfectly familiar with your arguments, and you are familiar with mine.

Mr. WETTRICK. I do not see how you can get away from it.

The CHAIRMAN. As I understood, you appear for the chamber of commerce and the transportation bureau, a public organization in Seattle?

Mr. WETTRICK. Yes.

The CHAIRMAN. Which is practically equivalent to saying that you appear for the community of Seattle?

Mr. WETTRICK. Yes.

The CHAIRMAN. As I interpret what you have just said, that community could not be injured by the passage of this bill.

Mr. WETTRICK. No, Senator; I thought I had also made myself clear that an absolute long-and-short-haul clause would bring about no condition that would result in any relative advantage to the interior cities, but the maintenance of the present act continues a condition which, because we have an additional means of transportation and additional markets of supply, etc., is an advantage to us. In other words, we can enjoy the additional advantages which accrue, if the present law is permitted to operate as it has in the past, without any injury to the interior communities. Deprive us of what that gives us, and you place them in no better relative position, as I look at it; so that we are really not in conflict on the question.

The CHAIRMAN. Your statement, as I understand it, and I do not want to misinterpret you in the slightest degree, but I understood your statement to be that the relative situation would not be maintained, but that, on the other hand, the disparity would be increased. My understanding of your argument and testimony has been that you are arguing that an absolute long-and-short-haul clause, by depriving the railroads of a certain amount of out-of-pocket revenue, thereby enables them to make a lower rate to the interior points than they otherwise would make, and that if they are

deprived of that terminal business by force of circumstances and through necessity of paying interest and dividends, they would have to raise the rates to the interior points. That is one of the factors in the equation. Another one is, as I understand from your testimony, that the ship lines would be relieved of railroad competition. You will have the terminal business to yourselves, and by reason of regulation, Government or otherwise, their rates will be kept down to a reasonable rate, by water transportation, which is the cheapest thing in the world; so that you will get at least as cheap or cheaper rates than you get now, and the interior points will get higher than they get now, and the city you represent will have a greater advantage over them than they have at the present time.

Mr. WETTRICK. That is the way you are looking at it, Senator?

The CHAIRMAN. That is the way I was looking at your testimony.

Mr. WETTRICK. Of course, if we took the stand that you seem to think would be the logical one for us to take, in view of what you have just said, then I think that we might be open to the charge that we were really selfish about this matter, because there we would be saying "Don't permit the railroads to compete because if they don't they can't make anything on the business we could give them, and, therefore, they will have to charge these intermediate points higher rates. We will get our stuff by water, and the differential between the rates will be greater than it might otherwise be." The fact that we are not taking that position, Senator, demonstrates, I think now, conclusively, that our interest in this matter is not a selfish one, and that our purpose is not to keep up intermediate rates.

The CHAIRMAN. You are appearing then, on behalf of the intermediate cities.

Mr. WETTRICK. No; I would not say that. I would say that they are looking out for their own interests, and I am looking out for the interests I represent.

Mr. LYON. Mr. Wettrick, what effect, in your opinion, does this competition by railroads—and by competition I mean the commission granting exception to the fourth section—have upon the water lines? And by that question I mean the effect upon them, as to whether it tends to increase or decrease the water lines or the ships operated by them?

Mr. WETTRICK. Oh, theoretically, of course, the tendency would be to decrease.

Mr. LYON. Now, you say theoretically.

Mr. WETTRICK. Yes.

Mr. LYON. Now, if there were 3,000,000 tons of transcontinental freight—westbound transcontinental freight—moving, and the commission permits exception to the fourth section, allowing the railroads to charge less for the long haul, and they make what Mr. Spence has failed to define and what Mr. Winchell has failed to define, and you have failed to define, as an equivalent rate, but whatever the rate be, the rail carriers get 1,500,000 tons and the water lines carry the other 1,500,000 tons, would you say that theoretically the shipping was decreased or practically it was decreased?

Mr. WETTRICK. Well, of course, I would have to admit the conclusion, which you have yourself figured, that the effect of making the water competitive rate has been to reduce the steamship tonnage.

Mr. LYON. I did not see how you could arrive at any other conclusion. Now, is it to the interest of Seattle to decrease that steamship tonnage or increase it? I wish you would speak, not from an altruistic idea or patriotic idea, but speak from the selfish interest of the city that sent you here. Will it be to its advantage from a money point of view? I always suspicion a man that speaks from patriotism and altruism. I want to get him down to the cold facts.

Mr. WETTRICK. I have not based anything I have said here on the ground of patriotism per se, and yet I do not think that any position I have taken is at all contrary to the broadest considerations of patriotism, so far as that is concerned. That is in the sense, Mr. Lyon, that I think it is for the best interests of the country. Now, I am going to answer your question in this way, by saying that we are interested in having both methods of transportation. It seems to me that that is the final answer to your question.

Mr. LYON. Well, I understand, then, that you are interested in not having the maximum amount of shipping, but you prefer that the transcontinental business moving to Seattle should move part by rail and part by water. Is that correct?

Mr. WETTRICK. Yes.

Mr. LYON. Now, what concrete advantage is to be to you to have the freight moving by rail, over and above the advantage it would be to you to have it laid on your docks by the water carriers?

Mr. WETTRICK. Well, I discussed that fully, Mr. Lyon.

Mr. LYON. See if I understand it. As I understood you to say that through the privilege of granting the rail carriers exceptions to the fourth section, it opened up to Seattle new markets of supply and also markets for sale. I took a memorandum of that at the time of your testimony. Is that the advantage which the rail carriers give you?

Mr. WETTRICK. That is one of them; then, of course, there are many others. It maintains a wholesome competition between rail and water. It enables you to use the one or the other as various considerations may make it necessary; and then, of course, if you are not willing to concede that it is of any benefit to us, then I would only say that I can see no reason why we should not be permitted to enjoy what little benefit we might see in it, as long as nobody else is injured.

Mr. LYON. This advantage which you have by the railroads opening up new markets of sale and new markets of supply, do I understand that they open up markets which the water carrier can not give you?

Mr. WETTRICK. Oh, undoubtedly.

Mr. LYON. And you think that when the rail carrier in its application to the commission to grant it the privilege of meeting the water competition—when that application is granted, it results in giving you something which the water lines can not, in the nature of things, give you? Do you think that the commission or the carriers have a right on the plea of meeting water competition to do that for Seattle?

Mr. WETTRICK. I think so. I think, Mr. Lyon, that is simply granting us the benefit of our natural advantages, and as I said before no one is injured by that, so why should anybody complain?

Mr. LYON. Then the reason that you are in favor of the fourth section as it stands is because the railroads can give you under that operation of that exception to the fourth section those things which the water lines can not give you? That is a fair inference from your statement, is it not?

Mr. WETTRICK. Oh, not exactly that; no.

Mr. LYON. State what it is, then.

Mr. WETTRICK. In part, Mr. Lyon, so that they can give us the same things that the water lines can give us.

Mr. LYON. Now, the same things the water lines give start at New York and go to Seattle. Now, I can understand how the carriers can meet those by exceptions—take the freight away from the dock at New York, the same as the boat does, and haul it to Seattle, but you said that it opened up to you new markets for sale and supply, and you stood by that proposition on my cross-examination here. Is it not the position of Seattle—and it seems to me it is perfectly apparent, and I do not say it is unreasonable from the point of view of Seattle—the question of whether it is unreasonable from the point of view of the ship lines and the interior; but is not the real thing and the reason you are here against both the judgment of Mr. Spence and Mr. Winchell, of the railroads, who think the coast cities have no interest in this question—are you not here because you know the railroads give you those things which the ship lines I represent can not confer upon Seattle?

Mr. WETTRICK. I will answer that in the affirmative, to shorten the discussion, if you want it, but simply add that the reason why they do it is because natural conditions forces them to do it.

Mr. LYON. Now, since you admit it, that is all I wanted to get. Now, do I understand that you appear here because you think you have a right to this rail competition? I took a memorandum of that.

Mr. WETTRICK. I have discussed that backward and forward, if the chairman please, and unless it is thought necessary to go over it again I would prefer to save the time.

The CHAIRMAN. I do not think so. I think Mr. Wettrick answered that very fully.

Mr. LYON. All right. Simply representing the coast people, I wanted just to pursue that. I understood he said he had a right to it and not the privilege of the carriers. I understand that you approve generally the action of the Interstate Commerce Commission under these fourth-section applications, with the exception of the last opinion which they rendered? I mean that is granting exceptions to the fourth section when the carriers applied.

Mr. WETTRICK. I think I stated that we had felt sometimes that the commission had really placed undue restrictions upon the carriers in applying the fourth section, but that the commission, having decided as it has, why, of course, we raised no question about it.

Mr. LYON. Now, just one other question, Mr. Wettrick: Do you understand that the commission, in acting under the amendment of 1910, where they granted the exceptions as special cases, looked at this question from any different point of view or had to look at it from any point of view other than they did prior to 1910?

Mr. WETTRICK. Yes.

Mr. LYON. You say they do?

Mr. WETTRICK. Yes.

Mr. LYON. In what respect is the law different? I think that is one of the questions before the committee.

Mr. WETTRICK. We also discussed that very fully, Mr. Lyon, and I answer you by saying that the commission, of course, gives effect to the same factors which impelled the carriers prior to the enactment of that amendment of 1910 to make the rate adjustment which exists, but in its application of that act, in what the carriers had been permitted to do in the relationships which have been established, the commission has differed widely from what the carriers had previously done.

Mr. LYON. But was that not true before 1910, when a complaint was brought before the commission complaining that the rate to Seattle was less than the Spokane prior to 1910, and when the commission had that question before it for decision did it not have to decide it on identically the same factors then that it has to decide it to-day, when the carriers make application for an exception?

Mr. WETTRICK. I would say that the same factors would be considered, but the law then left it to the carrier to decide whether or not there were substantially similar circumstances and conditions and left with them the right to make the rate.

Mr. LYON. Yes, I understand; but I am talking about the time when it was brought in by somebody who objected to it.

The CHAIRMAN. I think that is a matter of interpreting the statute, not a question of law.

Mr. LYON. I thought that that was one of the questions that wanted to be brought out here, because there has been the impression abroad that the amendment of 1910 brought something new into the law, and my theory of it, and as I understand its application by the commission, is that it has brought no new factor whatsoever into the law. It is exactly as it was prior to 1910, but that before any additional violations of the fourth section may be brought about, the commission has to decide the question previously, instead of subsequently, but upon identically the same factors.

Mr. WOOD. That is a matter, Mr. Chairman, on which I would like to suggest to Mr. Lyon that the decisions of the commission and the Supreme Court, before and after 1910, are an absolute and conclusive answer to his proposition, and with the consent of the chairman, I shall be glad to furnish to the committee the list of the decided cases which will demonstrate that Mr. Lyon is very much in error, which I think is much better for us than to discuss back and forth across the table.

Mr. LYON. Mr. Wood, could not I say that I differ with you absolutely? He says it is conclusive against my contention, but I am discussing it as I know the law, as I read it.

Mr. WOOD. I will be glad to furnish a memorandum of the cases.

Mr. LYON. I know you will.

The CHAIRMAN. I think you have made your position quite clear.

Mr. LYON. Yes; I thought it was a proposition to bring here, because there has been a wrong impression brought forth. When you finally analyze these very cases that Mr. Wood refers to, there has been no fundamental change. Now, we passed a law in 1910 or 1912 which gave the commission authority to suspend rates under the first section. We also last year, in 1917, passed a law that the carriers may not file any tariff without first submitting the question

to the Interstate Commerce Commission as to whether the rate should go into effect. That is exactly what was done in 1910, as I read the decisions about the fourth section, not that the commission under the act of 1917 or 1912, about the first section, approaches the question of whether a rate is reasonable from any different point of view than what it did before, but simply it must approach it prior to the beginning of it instead of subsequently, but the result upon the communities is identically the same.

The CHAIRMAN. In other words, your contention is that the Interstate Commerce Commission consider the same elements and factors of dissimilar conditions under the amendment of 1910 that they did under the act of 1897?

Mr. LYON. Exactly; and under the act of 1887 exactly what the carriers did prior to that time.

The CHAIRMAN. I think that is about all that we can develop on that subject now. You are more or less an expert on the decisions, and you have stated that as your view and we are very glad to have it.

Mr. LYON. And I think it is exactly the right construction.

Mr. WOOD. Mr. Chairman, will you bear with me for a moment, as long as Mr. Lyon has stated his views? I would like to state my views, which are to the effect that under the law as it existed before, with the words "under dissimilar circumstances and conditions" in the law under that statute as construed by the Supreme Court, that was the only subject open to inquiry. The circumstances and conditions were dissimilar, that was sufficient. The commission could then make no order, except under section 1, dealing with the reasonableness of the rates. It could not consider those rates—the amount of the rates and the relation of the rates to the terminal point.

Everyone of those words was stricken out of the statute, and then the commission's power was enlarged both as to questions of fact and to the order that it might make, that it should not only determine then whether the circumstances and conditions were dissimilar but whether that dissimilarity was sufficient to justify these departures, and not only that, but the extent of the departure which might be justified, the latter power being something that the commission could not exercise under the law before it was amended, and as illustrating that these very intermountain cases are in point, because in a number of decisions previous to the amendment the commission decided that inasmuch as there was a condition of water competition at the Pacific ports, they presented a dissimilar circumstance and condition, and yet they were foreclosed by the decisions of the Supreme Court in undertaking to grant any relief; that their jurisdiction was ended when they found dissimilarity of circumstances and conditions, and that they could not look at the rate at the terminal point, and the rate at the intermediate point, and determine whether that relation was greater or less than the dissimilarity of circumstances and conditions warranted.

When the law was amended, the commission decided—the commission then still finding the dissimilarity of circumstances and conditions in existence went further—and said that the relations between those rates were more to the disadvantage of the intermountain point than was justified by the dissimilar circumstances and conditions, and said what that difference should be. Now, that is the very point—one of the very points on which the transcontinental carriers

took the case to the Supreme Court. They asserted before the Supreme Court the position that Mr. Lyon has asserted here, that the law had made no change, and that when we say that the circumstances and conditions were dissimilar and were in themselves such as to warrant a departure, that then the function of the commission ceased, and that it could not say how extensive that departure should be, and the Supreme Court held that the commission did have that authority which the commission had undertaken to exercise, although in previous decisions, under the old law, they had denied to the commission any authority to do anything but determine the dissimilarity of circumstances and conditions themselves.

Mr. WETTRICK. Mr. Chairman, has anyone else any questions they want to ask me? If not, there is one thing I want to say in addition along the line of the consideration of this question at this time. I think that you are familiar with the fact that the Joint Committee on Interstate Commerce of the Senate and the House have held extended hearings. We sat a whole week on this same question in San Francisco last November, and really everything was said there, you might say, that has been said here, with the exception of the illuminating statement of Mr. Spence, which treats the subject in a more comprehensive way than, I think, it has ever been treated; but Representative Adamson, who was vice chairman of that committee, I notice in part 13 of the report of the joint committee, states that inasmuch as he is severing his connection with the committee, he would like to express a view of his impressions, and he starts in with this paragraph:

It is obvious to me from the investigations held in San Francisco and general conditions that during the war it is not practicable to give satisfactory consideration to the subjects before the committee, much less to make a final report. The public attention is so engrossed on subjects connected with the war as to be reflected in the testimony of every witness. Naturally, witnesses are considering war conditions, and when we try to consider permanent peace practices and regulations, the tendency is to apply to them the same treatment that is appropriate to war conditions, which is a mistake.

Now, I think that this question might well have waited the conclusion of the war, and the report of this joint committee on interstate commerce, which considered not only one phase of the interstate commerce act, but the entire subject, and which was created to suggest to Congress improvements or modifications that might be made.

STATEMENT OF MR. JAY W. McCUNE, SECRETARY TRAFFIC AND TRANSPORTATION BUREAU, TACOMA COMMERCIAL CLUB AND CHAMBER OF COMMERCE, TACOMA, WASH.

Mr. McCUNE. Mr. Chairman, for my appearing here I do not feel called upon to make an apology, because I think it is of interest to the committee to know what the shippers of the Pacific coast think about this proposed amendment. I am not an attorney and am not going to enter into any discussion of the law, either as it originally was or as it is at the present time. But I am going to try to give you the practical, common-sense point of view of the shipper, as represented by the manufacturers, jobbers, and merchants of Tacoma, whom I represent. I appear in their behalf at their request, and on behalf of no one else, of no other interest. I might say, to show you

that they are interested in this matter, that on Thursday night I sent out about 160 notices of a meeting the following noon which reached them in the mail on Friday morning. At the meeting, which was held at lunch, there were 40 of the representative business men of the city of Tacoma present, and they showed a very keen interest in the proposed amendment and the fact that there were to be hearings at this time, and instructed me to appear and express as nearly as I could their opinion on the matter.

We assume that the purpose of the hearing is to decide whether or not the fourth section of the act is to be amended; that is to say, it is not for the purpose of trying the intermountain rate case, but to decide whether or not the Interstate Commerce Commission should be deprived of the power to permit violations of the fourth section.

The organization which I represent has always opposed an absolute long-and-short-haul clause. You will remember, Mr. Chairman, that in 1916, when you first proposed to introduce such a bill, I was instructed to take it up with you at that time and oppose the idea.

At this time we feel that no amendment to the fourth section of the act is necessary, particularly for the reason that the reasons which the intermountain country has heretofore advanced have all been removed; that is to say, the discrimination or difference in rates has disappeared under the recent decision of the commission, and there is no differential against intermountain territory. We also feel that no change should be made at this time because of the present disturbed conditions, which are as abnormal as they possibly could be, I think it will be conceded.

The suggestion was made at that meeting of our shippers that the amendment of the fourth section could have no possible bearing on the successful prosecution of the war, and we are very strong in that section of the country for confining ourselves at this particular time to anything that will help win the war. That is the only important business before the country as we see it.

Another feature which should be considered seriously, I think, by the committee, is the fact that the railroads are now under governmental control. No one can say what the future holds, and it is quite possible that an absolute fourth section might seriously hamper the Director General in his operation of the railroads under Federal control. An absolute fourth section could have no possible bearing upon the intermountain-rate cases or the intermountain rates until after the war—in fact, until some time after the war—because I think it is perfectly understood that water competition will not return immediately upon the close of the war. We on the coast are confronted with a very substantial advance in freight rates at the present time, those that went into effect on the 15th of the month. Some of those advances are absolutely unjust in our opinion, too.

I had not intended to go into that matter very much, but it might be interesting to know something about what the effect has been, particularly with regard to the effect upon shipbuilding. Steel-ship building is a new industry so far as Tacoma is concerned, but we have a very substantial proposition now operating in Tacoma, the Todd Construction and Dry Dock Company; the advance on the iron and steel which that company will buy and use from the Pitts-

burgh district or from Chicago, either one, is 25 cents a hundred pounds, which is \$5 a ton. It is a certainty that that is going to greatly increase the cost of building ships at Tacoma, and, as a matter of fact, while we have got a higher rate than Spokane, it does not benefit Spokane that we have to pay that increase because Spokane is building no ships. You get the idea I wish to convey?

The CHAIRMAN. I was just going to say that that condition, if it is an injury, is not due to this bill, or would not be due to it if it were enacted. That is under a decision of the Interstate Commerce Commission under the existing law, and under normal conditions, according to all the arguments that have been made here, you would not suffer from that injury at all, because there would be ships coming around there that would bring this iron at probably even a lower price.

Mr. McCUNE. I was thinking that the perpetuation of that condition will be effected by the passage of such a bill until such time as normal conditions return, when, as you say, we undoubtedly would have water competition again, although we probably would not get, if we had an absolute fourth section, as favorable water rates as we have heretofore had, which I will refer to a little later.

The cost of shipbuilding on the Pacific coast certainly will not be conducive to the enlargement of the American mercantile marine, which we have heard Mr. Lyon speak so much about. I think it must be evident to the committee that there is only one reason why the American-Hawaiian and the Luckenbach Steamship Cos. display such a keen interest in this matter, and that is from the standpoint of increasing their earnings by such a measure through the fact that they could make higher rates; they would not have to make as low rates as they have heretofore. And, while I am mentioning that steamship company, I should like to call your attention to the fact that when the Panama Canal opened and the American-Hawaiian Steamship Co. began operating through it, substantial reductions in rates were made; but, as a matter of fact, the steamship company got just as much from that traffic as it did before under the higher rates, for the reason that while they were operating over the Tehuantepec route they had to pay, as the testimony has shown in these cases, 33½ per cent of their revenue to the railway across the Isthmus; so where they had a rate of 60 cents before the opening of the Panama Canal, and made a rate of 40 cents after the opening of the canal, it was the same rate, as far as steamship companies were concerned.

I am here largely in the defense of a principle of rate making in which we believe. The intermountain situation is not the only one in which this fourth section is involved by any manner of means. There are countless cases of violations of the fourth section which have been permitted, and we believe properly so. If an absolute fourth section is enacted, all these cases will have to be adjusted at once upon the basis of the new law, which, to say the least, will mean a very confused and disrupted rate structure for some time to come, as I believe. These cases have been decided on their merits, too, but, as a matter of fact, they will have to be readjusted, not on their merits but arbitrarily.

Even if we assume that the commission has always decided these intermountain cases wrong—and that is considerable of an assumption, too, I think—it does not seem to us that that would justify Congress in discarding the principle which has been applied in so many other cases satisfactorily to all concerned.

If the committee decides that an absolute fourth section should be enacted, I would think that it must be shown, in order to reach that conclusion, that there will be a very practicable, direct, and tangible benefit to a large number of people, and, so far as we can see, that has not been shown and can not be shown, but, on the contrary, the converse is more likely to be true.

We have a reason for being interested in seeing the railroads allowed to meet water competition in Tacoma which might not appear to everybody, but it does to us, and quite strongly. We want the transcontinental railroads to prosper. You know, in Tacoma we have the shops of the Northern Pacific Railway, with a very large pay roll. It is a big item to our merchants. We have the ocean terminal of the Chicago, Milwaukee & St. Paul Railroad Co., with three immense import and export warehouses and a very large force of men, and we also have the service of the Oregon & Washington Railroad & Navigation Co. and the Great Northern Railway Co. All those roads buy to a large extent from our manufacturers, of lumber particularly, and we want to patronize them, but we can not patronize them if we have got to pay them a higher freight rate than we can secure on the water lines.

It is perfectly apparent to me that no matter how much we want to use the rails we could not if we would, assuming that there is a water line operating at normal water rates. A jobber, for instance, of hardware who got his freight by railroad could not compete in any of our territory with a jobber in Seattle who gets his by water, because any freight that naturally moves by water is the class of freight on which the freight charge is a considerable item in the cost of the goods, and therefore any difference in freight rates is reflected immediately in the price of the material, and a difference of 15 cents a hundred pound is immediately felt in trying to sell in competition.

This whole proposition, as we see it, is really returning to what I sometimes think is the only fundamental principle in rate making, and that is what the traffic will bear—not all the traffic will bear, but what the traffic will bear fairly. Naturally, the railroads, I think, would be very well satisfied if there never were any ships operating between the coasts, because the traffic then could and would bear a higher rate, but they know as well as they want to know that as long as the ocean is there it will always be utilized to some extent, greater or less at times, but it is to be reckoned with all the time. The operation of a railroad is not a philanthropic proposition, and they must make as much as they can, and they should be allowed to meet conditions as they find them.

I stated that proposition in a letter to you, Mr. Chairman, practically what our idea is. That is, that Spokane, or any community, is entitled to a just and reasonable rate. They are also entitled to any benefits they can derive from their proximity to tidewater, but that does not involve considering Spokane a port when it is 400 miles in the interior. Now, the railroad, when it meets the demand

that it finds at the port—that is, makes the equivalent of the water rate—is doing everything that it ought to ask to be allowed to do, or ought to be expected to do at the port cities, and when it comes to Spokane and finds freight moving by water back, when it makes the equivalent of that rate, it does seem to us that that is all it should be expected to do for Spokane. In other words, when they meet the conditions that they find at each community, always assuming, of course, that they do not make any rates below the out-of-pocket cost, but that is a proper condition and should be permitted.

The steamship companies have always engaged extensively in that interior business, and I think that the railroads themselves have only done in the interior what they were compelled to do, as they have done at the coast what they were compelled to do—meet the competitive condition.

We, as I say, are very much interested in the railroads' prosperity, and in fact I think it can not be denied that our interest is a little bit greater in the railroads than it is in the steamships, for the reason that the railroads are always there. They realize their obligation to give us service, and the steamship companies, on the other hand, have plainly shown that they consider themselves under no obligation. In fact, that is what the traffic manager of the Hawaiian Steamship Co. testified to in one of these hearings—that they were under no obligation to give us service, although they had built up a large and lucrative business, but that they would give us service as long as they could make money; but when they could make money—more money—somewhere else, they would go there and get it.

I think that is about all I want to say, and we sincerely hope that this committee will not see fit at this time to recommend that this bill be enacted.

The CHAIRMAN. Now, I suppose, Mr. Lyon, you come next.

Mr. LYON. Just as the committee pleases. I believe Mr. McCarthy was to speak next.

STATEMENT OF W. S. McCARTHY, SALT LAKE CITY, UTAH.

Mr. McCARTHY. Mr. Chairman and gentlemen, I should like to make a very brief additional statement. What I have to say is in connection with some matters brought up during the statements made by some of those who appeared here in opposition to this measure, somethings that I think should be given consideration, particularly concerning the effect of the proposed legislation upon long lines, which endeavor to compete with short-line mileage. Everything that has been said here with reference to that has been presumption. It is presumed, it is assumed, that if this measure were enacted into law the long line would go out of business. So far as the transcontinental rates are concerned, they have now been in effect at all intermediate points since the 15th day of March. Between Chicago and San Francisco the Santa Fe is the long line. Between Omaha and Spokane the Union Pacific system is the long line. No one, so far as I know, has heard of those lines attempting to go out of that business; in all my experience in connection with traffic affairs, covering a number of years, I never have known of a condition of that kind existing. I never have known of any rail-

road voluntarily retiring from business of that kind, and there is nothing so far to indicate that they would do that. This has been merely an expression of opinion not supported by facts on the part of everyone that if that law were enacted it would deprive the country of transportation facilities and do no one any good.

In his statement Mr. Barlow made it quite clear, I think, that maximum hauls produce maximum revenue. It has been made to appear that the intermountain country, the interior country, hopes to profit by this law and hopes to get something that they really feel they are not entitled to. So far as Utah is concerned, I want to say that we are of the opinion, and we always have been of the opinion, that any rate charged to the Pacific coast for any purpose would be not only remunerative but a highly remunerative rate at Utah. We go further than that and think that we are entitled to a lower rate, and if in voicing that opinion we appear to criticize the Interstate Commerce Commission that of course can not be helped.

Mr. Spence said that the transcontinental terminal tonnage was the backbone of the business of the Union Pacific Railroad. Now, if that is true, the same thing applies to the Western Pacific Railroad and in much greater degree. The Western Pacific Railroad is a line running from Salt Lake City to San Francisco, practically without a branch of any kind. For at least half its mileage it parallels the Southern Pacific line and they are practically on the same road-bed for a long distance. The Western Pacific Railway has no other source of revenue than that derived from transcontinental tonnage. That is a statement that is very nearly 100 per cent true, and yet—and I want to say this, that in support of my claim, that the rates to the transcontinental terminal applied at Utah are remunerative rates per se, is borne out by the fact that no other railroad in the United States earns as much per ton as the Western Pacific. The average revenue per ton of the Western Pacific Railway for the year ending December 31, 1916, according to the figures supplied by the Interstate Commerce Commission in a preliminary abstract is \$3.80 per ton. The Chicago and Northwestern Railway, operating in the Mississippi River Valley, and one of the most prosperous railroads in the United States, earns \$1.15 per ton. The next in point of earnings to the Western Pacific is the Union Pacific, concerning which Mr. Spence says transcontinental terminal traffic is the backbone of their business, and they earn \$3.57 per ton average, compared with \$1.05 of the Pennsylvania Railroad Co., \$1.10 for the Baltimore & Ohio, \$1.27 for the New York Central, \$1.58 for the Southern Railway.

An examination of the figures of these transcontinental lines handling the volume of the transcontinental traffic will show that their average revenue per ton exceeds that of any other railroads in the United States. So I think we have good ground for our claim that the rates in effect prior to the 15th day of March to the Pacific coast terminals were reasonable rates, per se—at least, that they were not subnormal rates as claimed by the carriers. And I would call your attention to the fact that even Mr. Mann would not admit that they were reasonable rates. He did not say they were too high, but I have heard the opinion expressed by Pacific coast interests that

those rates in effect prior to March 15 were reasonable rates, per se, and that they should not be raised.

Another rather significant fact in connection with this matter is that the only railroads represented are lines west of the Mississippi River—that is, personally represented—the Union Pacific and the Southern Pacific. Not a foot of line east of the Missouri River is personally represented at this hearing. And notwithstanding the fact that they are about to be ruined by this legislation if it passes, they are not here in opposition to it, and say nothing about it.

Some reference was made to the destructive effect upon a railroad in the South. It certainly is not a line of any prominence, because it is not very generally known throughout the country.

The CHAIRMAN. It is in receivership.

Mr. McCARTHY. Yes, sir. No fair comparison could be made between a line of that kind and lines handling transcontinental terminal business, because its length was not sufficient; it was not in a position to handle transcontinental terminal business; and if as a result of bad judgment a line was built where it was not needed, I do not see any reason why the rest of the country should be penalized on that account.

Mr. Mann made reference to rates to Utah as reasonable rates. I want to say that the rates to Utah at the present time are not approved by the Interstate Commerce Commission as reasonable rates. While it is true that they are in effect; that tariffs were filed and accepted by the Interstate Commerce Commission, it can not be claimed that the rates were found reasonable by the commission, because no investigation was ever made by the commission as to their reasonableness. They were established on a relative basis with rates in effect at Colorado points, and, as I think I said in the Senate hearing, the Interstate Commerce Commission, to my knowledge, has never made an investigation of any kind to ascertain what the cost of this service is; and how they can decide that a rate is remunerative or nonremunerative without having any basis upon which to reach that conclusion I do not understand. And I repeat what I said in my direct statement when I called attention to the fact that no railroad man had ever told us what is a reasonable rate to the coast; what rate pays the out-of-pocket cost or what rate does not pay the out-of-pocket cost. In response to questions by various Members of Congress, Mr. Spence would not say whether a 65-cent rate or a 40-cent rate on exactly the same commodity between the same points covered only the out-of-pocket cost. It never has been said by anyone, and I believe, regardless of anything that has been said, that for any particular item of tonnage as large in volume as the iron and steel tonnage across this country is, the cost of handling can be ascertained, and without any great amount of trouble. The fact remains that the Railway Commission of Nevada did ascertain the cost of handling freight, and it appears in the record in their case. But the Interstate Commerce Commission has never attempted to do anything of that kind in the fixing of intermountain rates.

I think I have nothing further to say in that connection.

The CHAIRMAN. Now you may proceed, Mr. Lyon.

STATEMENT OF MR. FRANK LYON, WASHINGTON, D. C.

Mr. LYON. Mr. Chairman, I am an attorney with offices in Washington, D. C. If the committee please, in the litigation before the Interstate Commerce Commission in connection with violations of the fourth section, in 1915 or 1916, I was retained by the American-Hawaiian Steamship Co., the Luckenbach Co., and Grace & Co., who operated boats between the Atlantic and Pacific seaboard, to appear before the commission, and as far as I could, protect their interests, so far as they had any before the Interstate Commerce Commission. I undertook that work and have appeared for the first two companies throughout the proceedings. Grace & Co. soon discontinued the Atlantic-Pacific coast business, and I was no longer retained by them. In looking into the question of whether the steamship companies had any rights before the commission, I had to consider the law. I started with the Interstate Commerce Commission in 1887, two months after it was organized, and I stayed with them until 1899; in 1907 I returned at the request of now Secretary Lane, to act as his examiner, and I remained with the commission as examiner and attorney until 1912, when I went out to practice law.

In looking over the law to see whether the steamship companies had any rights I came to the conclusion that they had no standing whatsoever before the Interstate Commerce Commission. I mean by that that the steamship companies which are not connected with railroads, have no joint rates and no connections, have no rights before the commission. The Interstate Commerce Commission was not created by Congress, as I understand it, to further the interests of steamship lines. It was created by Congress primarily to protect those who ship over the railroads; and, secondarily, to protect the railroads. As to the protection of the steamship lines under the interstate commerce act none was provided. The commission had no concern about them and at the present time has none. Whether the Hawaiian Steamship line goes to the wall, whether it pays a dividend, whether it goes into the hands of a receiver, is a matter of no moment to the Interstate Commerce Commission.

So, in appearing before the commission, all I could do was to ask if we might present facts which we had within our knowledge, so that the commission could act intelligently upon the applications of the railroads. The practice under the fourth section through a long series of years, as I understand it, has been for shippers to use the steamship companies as a great bugaboo to the railroads, to get the railroads to reduce their rates. When a big shipper in the Middle West wants a rate reduced by the transcontinental lines—I mean up to the war period—they would go to the Santa Fe Railroad or the Rock Island Railroad, operating out of Chicago, and say that "The American-Hawaiian Steamship Co. and the Luckenbach Steamship Co. can move a certain class of freight from the Atlantic seaboard to the Pacific seaboard that we can make near Chicago, and if you don't reduce your rates, our business will all be moved over to the Atlantic seaboard." And generally the Santa Fe and the Rock Island would fall for that kind of business. So the steamship companies asked me to present the facts as to what rates they were secur-

ing on these various commodities. In carrying out that direction I had prepared most elaborate statements of the Luckenbach and American-Hawaiian Steamship companies covering all that business for the period of a year, or since the opening of the Panama Canal—this was a year after the opening of the Panama Canal—showing just what freight they moved; how many tons; what rate was secured for it, where it originated, and the whole transaction, and I laid it before the commission so that that body could have before it the real facts to see whether there was anything upon which to base these claims of the carriers, and then to decide to what extent it should be granted.

Now, I want to say, in opening, I am not here for the steamship companies to advise this Congress what to do. In the first place, the steamship companies have not asked me to appear as such. It is not their duty, as they look upon it, to direct or advise Congress what to do. I am here to state to you what we think is the effect of certain legislation upon the steamship business, the merchant marine. After stating what effect we think the legislation has, it is then for Congress to decide as to whether there shall be a merchant marine or whether there shall not be a merchant marine. The facts we present we hope will lead to a proper conclusion by Congress of this vital matter.

Now, I say first that if there are 3,000,000 tons of freight to move between the Atlantic and the Pacific seaboards, as did move in 1910 or 1911—

Mr. ESCH (interrupting). One million by canal.

Mr. LYON. Not in 1911. About 300,000 tons of freight was found by the commission in the Reno case to have moved by water in 1906. I may be wrong about the date. There is some claim that even all of that 300,000 did not move by water. But that is a mere detail. I think it is generally understood now from the recent hearings that instead of there being 3,000,000 tons of transcontinental freight there is in the neighborhood of 6,000,000 tons. I haven't the figures exactly available, and you can not get the railroads, for any consideration, to furnish them. Although the boat lines throughout this investigation furnished voluntarily to the commission every pound of freight which they shipped from the eastern seaboard to the western seaboard, they never could get—and there isn't any record to-day—any information as to what these railroads hauled. The commission decided in these cases that it was necessary to reduce the railroad rates so much to meet the water competition, when the commission did not have before it—and the railroads would not furnish it and the commission would not call for it—information as to how much freight the railroads were moving.

Now, we say if that freight is to move it is for Congress to decide, as a matter of public policy, as to how it shall move. I look upon this just as the railroads do. I think these other gentlemen have very little standing in this question before this committee, except to give general information as citizens as to what is a good thing for the country to do. This is a contest between transportation interests. It is a question of which transportation interest shall move this traffic, and it is a question for Congress to decide, and I think very properly with Congress. Under existing law it now improperly lies with the Interstate Commerce Commission.

The Interstate Commerce Commission now decide how much of this 6,000,000 tons of freight is to move by water and how much by rail. They never state that. They never state for a minute that they mean to parcel out this business between the steamship lines on the one hand and the railroad on the other, but they do it by saying they will make an "equivalent" rate. You can not get them to define what they mean by "equivalent" rate. You can not get a railroad man to define what he means by it. There is no definition to the term.

There is no business to-day between the Atlantic and Pacific by water. The railroads have 100 per cent of it. Assume that the war is over; the Luckenbach Steamship Co., which I represent, has 15 or 20 boats and it enters the business and makes a certain rate. It begins to get a little bit of business; 100,000 tons, say. These railroads go to the commission and say, "Here, the Luckenbach Steamship Co. is getting some of the business, while formerly we got all of it." The commission then sits to decide what is an "equivalent" rate. I think we are entitled to know what they mean by that. The equivalent rate as applied is the rate that will take the business away from the steamship company. If it is not that it has no meaning. There is no purpose in the railroad coming to the commission after this war, as it will under this invitation extended by the commission, unless the commission will make that rate something that will take business away from the water line.

Now, I say that is the question, which it seems to me it is wrong public policy to leave to any body of men to decide. Of course, I differ radically with the gentlemen who have appeared here representing the coast cities and the cities which have the lower rates. They have no interest, of course, in these water lines, except for such advantages as they can get from transportation.

(The committee here took a recess for 10 minutes.)

I may repeat myself a little, because I have no written memorandum. I am only speaking from a general knowledge of the subject.

As I was saying, the water lines substantially agree with the position taken here by the railroads.

The CHAIRMAN. You mean now the ocean-carrying water lines?

Mr. LYON. Yes; well, I speak directly for the one company whose business I generally attend to before the Interstate Commerce Commission, the Luckenbach Steamship Co. By the way that company is one, I think, of the largest companies under the American flag, if not the largest. I think it had some 20 or 30 ships at the time the war started last spring. A good many of them have been in the trans-Atlantic service and some of them have been sunk by torpedoes.

Now, we look at it the same way, that the question here—and the reason I am here speaking for the water lines is to impress Congress with the idea that this is not what the intermountain people and the coast people seem to make of it. It is not a question for the Interstate Commerce Commission to decide. In our opinion it is not a question to be left for any administrative body to decide. In our view Congress should take a position as to whether it wants a merchant marine—and by merchant marine now I speak of the coast-

wise merchant marine and the lakes and rivers of this country—or whether it does not want one.

If it does not want ships on the coasts; if it does not want ships on the Great Lakes; if it does not want boats on the canals and on the waterways of the country, why it ought to take that position and come up frankly and say so. But when it appropriates a billion dollars, as I think the recent estimates are, for improvement of harbors, the Mississippi River, the Ohio River, the lakes and various other rivers in the United States, and then appropriate \$500,000,000 to build a canal, it seems to us that the shipping interests should know whether Congress has expended that money for the purpose of floating commerce, which we think it ought to be for, or whether the purpose of Congress is to appropriate a billion five hundred million from the Public Treasury merely to beat down the railroad rates of the country. That seems to be the purpose for which it has been used thus far.

The chairman has taken a good deal of the wind out of my sails by questions he asked here about the propriety of Congress pursuing such a course. I have a memorandum which I made the day before yesterday, thinking I would speak on this subject. I went so far as to say that it is practically immoral for Congress, after having appointed a commission to fix reasonable railroad rates to then spend a billion and a half dollars—five hundred millions for the Panama Canal—the purpose of which is to make these railroads accept less than the reasonable rates provided by law. We think the money was appropriated and the Panama Canal was built with the purpose in view of floating commerce and not for the purpose of reducing transcontinental rates. If it was built for the purpose of floating commerce between the Atlantic and Pacific, then we think it is inconsistent with law to have the Interstate Commerce Commission hold that that effort to float commerce upon it constitutes a “special case” under the fourth section and warrants the commission in permitting the railroads to charge less from the Atlantic to the Pacific, less from Chicago to the Pacific and less from Colorado to the Pacific, than the railroads at the same time charge intermediate points in order to take from the boat lines traffic which they would otherwise transport through the Panama Canal.

In fact, Congress went about as far as it could to prohibit the transcontinental roads from competing with ships on the Panama Canal when it provided in the law that no railroad boat should be allowed to pass through the canal. If there was any purpose in this provision of the law it was to prevent the railroads from destroying or interfering with the independent boat lines operating through the canal. It is further emphasized by that provision of the Panama act whereby the commission, after investigation, may allow a railroad to own and operate a boat line when it is not to the public injury, but the Panama Canal is excepted from this, and as to that the railroads are absolutely forbidden to own or operate boats. In the face of this hardly had the canal been opened to traffic when these same transcontinental railroads applied to the commission for permission to meet the water competition through the canal by making the rates from the Atlantic seaboard and from points of origin as far west as Colorado to San Francisco less for the long haul than for the short haul. The commission granted the request. In other words, while Congress forbade the transcontinental roads from competing with

the independent boat lines through the canal by the ownership of boats, the commission held that those railroads might compete with the independent water lines not only between Atlantic and Pacific coast ports but even from interior United States points by the simple but effective method of charging less for the longer than for the shorter distance. These railroad rates were made with the approval of the commission at a figure something more than the out-of-pocket cost.

That decision was of great benefit to the railroads. If the Panama act had permitted the railroads to compete by the ownership of boats through the canal it would have required an investment of twenty-five or fifty million dollars for the purchase of a fleet. By receiving the approval of the commission in the charging of less for the longer distance no additional investment was required. So what would have appeared to be a disadvantage to the railroads turned out to be a material advantage.

I am not here to say that the commission decided contrary to the law when it held that the railroads might charge less for the longer distance in order to meet either actual or potential water competition. The Supreme Court of the United States held in the old Alabama Midland case that the commission should take into consideration potential competition in fourth section application cases. The commission has followed the reasoning of the courts in making its decisions. The law needs amending. Railroads since their beginning have made long-distance rates lower than intermediate rates for the purpose of not only meeting but driving out water competition. Congress has never declared this to be against public policy. It has always left the matter in the hands of the commission to determine when the facts warrant the violation, but it has never said anything that would suggest the commission should deny the application if there was real water competition. The Interstate Commerce Commission can not get away from the past, and the past is that the railroads have a right to meet water competition, and not only meet actual water competition but even potential competition. The commission said in one of these southeastern cases, it is possible that these ships may come back upon the Mississippi River if these railroad rates are raised. They had back of them the Alabama-Midland case. It will take an act of Congress to get the commission away from it.

Now, the money which built this canal was appropriated by Congress, and they said to the railroads: "You must not operate steamship companies through the canal." And yet they go to the Interstate Commerce Commission and accomplish the purpose much more effectively, much more disastrously to the water lines than if you had permitted them to use the waterway for the purpose of operating railroad-owned boats and had forbidden the commission to make an exception to the fourth section over the railroad lines. When the legislation was before Congress way back in 1903 or 1904, before the Panama Canal was started, I understand that some one connected with the American-Hawaiian was summoned before the committee that had up the question of whether there should be a canal, whether it would be good public policy to build it, and particularly whether these steamship companies would operate through the canal and transport this coast to coast business. I understand that these witnesses stated that they would

use the Panama Canal if Congress should build it, and when the canal was dug they commenced using it, and the first year I think transported probably 600,000 tons of water-borne freight through the canal. I think there were probably 300,000 tons of coal, if I remember, and probably 600,000 tons of merchandise. But as soon as we commenced getting that business—I think in November, 1914; the canal was opened in August—these carriers made application to the commission and made this showing that the steamship companies were getting their business and asked for a reduction of the rates, all rail, so that the railroads could continue to move that business.

Now, what I want to get before you is, what is the purpose of such an application, and what does it accomplish? You continually hear this talk about an equivalent rate. What do they mean by "equivalent rate?" What is its function? What does it do? The rate cuts no figure; the railroads are not after the rate. They are after tonnage, and the commission by the equivalent rate must mean some rate that the commission thinks will take some of the business away from the water line and give it to the railroads. I asked every witness, every railroad witness on the stand, including Mr. Spence who made such a very able statement here from the railroads' point of view, what percentage of the business did he want the commission to take away from the American-Hawaiian and Luckenbach Steamship Cos.? Do they want 1 per cent, or 99 per cent? I think he said 50-50, laughingly.

Mr. Wood. You are mistaken about that.

Mr. Lyon. Well, I do not want to misstate it. My recollection is that some witness said 50-50. But if they want to take 1 per cent, why not take 99 per cent? I think there is no answer to it. If the Interstate Commerce Commission has a right to make an equivalent rate that will take 1 per cent of the water business, I think they are justified in doing what the railroads did prior to 1910—take all the water-borne business from the ships, so long as they do not go below the out-of-pocket cost and thereby impose a burden upon intermediate traffic.

Formerly the railroads took 100 per cent of the water business and destroyed the water lines, so far as they could. And that was their ultimate object, and I think—not for a moment in criticism of railroads—it was a fight between contending transportation interests, and they had a perfect right and justification to destroy those water lines if Congress left the fight on, as long as they did not impose any burden upon the intermediate traffic. Of course, that was always a question and always will be a question of dispute as to when a railroad has reached that rate at terminals that does or does not go below what is termed the out-of-pocket cost.

Now, as to the out-of-pocket cost, only in one case that I know of has a line made a presentation of the out-of-pocket cost. The Southern Pacific presented a so-called out-of-pocket cost of moving freight eastbound from San Francisco to New York. They presented some figure on that, but the figures have never been definitely accepted by anyone as correct. You can no more determine accurately the cost of moving specific freight than you could determine the cost of raising a pound of tenderloin steak. You might as well try to go back and get the feed that the steer has eaten and distinguished between the tenderloin and chuck, the hoof or head. Those things are not ascer-

tainable. It is beyond the possibility of any man to determine exactly what the out-of-pocket cost is. So there is nothing, in my opinion definite about that cost. We can get some conception of out-of-pocket cost as to carload freight. We have tried to do it. I was with the commission a long time, and we attempted to get some figures on carloads of coal moving between specific points—that is, separating engineers' wages and the cost of fuel and the repairs to the cars, and setting those on one side against the general administrative costs. You can approximate that, but it is a very difficult subject and one which the commission itself has never, in my experience, attempted to ascertain.

Although Mr. Spence, representing the Southern Pacific in the recent litigation that has been up on the subject of transcontinental rates, recommended to the commission, as I remember it, that before it granted any exceptions to the fourth section, it should hold that the railroads should make a showing to the commission that it did not impose a burden upon other commerce, the commission does not provide for it in its circular as to the fourth-section applications. I think that was substantially what Mr. Spence said, and it was in accordance with what the commission had always said, and what the courts had always said, that the railroads might go to this low point so long as it did not impose a burden upon intermediate traffic. Before you could ascertain whether it would impose a burden upon intermediate traffic fundamentally, it seems to me you would have to know the cost; and that is what the Southern Pacific offered and suggested to the commission that should be demanded before the commission granted an exception. The commission on December 18, 1917, issued this circular. If the committee would like to have it put into the record, it may be of interested to them. It relates to exceptions to the fourth section, as to what the carriers expected to do before any relief is granted. I will ask that this be incorporated as a part of my remarks.

The CHAIRMAN. Without objection, it may go into the record. (The paper referred to follows:)

[Fourth Section Circular No. 5.]

INTERSTATE COMMERCE COMMISSION.

APPLICATIONS FOR RELIEF FROM THE LONG-AND-SHORT-HAUL CLAUSE OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE AS AMENDED JUNE 18, 1910.

In order to facilitate the handling and disposition of fourth section applications assigned for hearing, and for the purpose of obviating the necessity for applications under the fifteenth section of the act when fourth section relief is denied, the record in fourth section hearings should contain full and complete information, not only of the reasons and facts upon which the prayer for relief is based, but in addition thereto evidence and data which will enable the commission to determine what would be a reasonable rate to the terminal point to be the maximum at intermediate points on the line of the petitioning carrier or what would be reasonable rates to the higher rated intermediate points in the event that fourth section relief is denied. The carriers should therefore be prepared to show in support of their application in each instance the following information:

"WHERE THE RELIEF SOUGHT IS BASED UPON THE GROUND OF A CIRCUITOUS ROUTE.

"1. That the competitive rate which is met at the more distant point is a compelled rate and in and of itself lower than a reasonable rate.

- "2. The distance via the short route between the competitive points.
- "3. The distance via the circuitous route between the same points.
- "4. Whether or not the short-line rates conform to the fourth section.
- "5. Whether or not there is a complaint pending as to the reasonableness of the rates of the long line at the intermediate points.
- "6. What is the highest rate from, to, or between intermediate points.
- "7. A showing as to the reasonableness of the rates at the intermediate points.
- "8. The shortest distance from, to, or between intermediate points on the circuitous route at which higher rates are maintained, the names thereof, and the rates charged at such points.
- "9. What would be a reasonable rate to be established at the terminal point to be the maximum at intermediate points.

"In other words—

"(a) What are the conditions necessitating the lower rate at competitive points, and why is it a compelled rate and lower than a reasonable rate?

"(b) What is the distance from point of origin to the first intermediate point at which a higher rate is maintained than to the farther distant point, the name thereof, and the rates charged thereto?

"(c) What is the distance from the first intermediate point of origin to the first intermediate point of destination between which a higher rate is maintained than between the more distant points, the names of such points, and the rates applicable thereto?

"(d) What is the distance from the first intermediate point of origin from which a higher rate is maintained to the competitive point of destination, the name of such point, and the rates applicable therefrom?

"(In the absence of special circumstances the commission usually denies the circuitous route authority to charge higher rates at intermediate points no greater distance from the point of origin than the distance between the competitive points via the short line.)

"(e) What are the facts as to the reasonableness per se of the rates at the intermediate points, or as compared with the rates to or from the farther distant point?

"(f) What would be a reasonable rate to be established at the terminal point in the event that fourth section relief is denied?

"(If there are a number of points involved located in different groups, zones, or territories, it will be sufficient, ordinarily, to show only the distances between representative points in each group, zone, or territory if such a showing will clearly indicate the comparative distances via the direct and circuitous lines. Four copies of a diagram or map showing the relative positions of the various lines or routes, the points of origin and destination, and the intermediate points at which higher rates or fares are to be charged should be submitted.)"

A difference of but a few miles in distance is not of itself considered as placing a carrier at such a disadvantage as to warrant relief from the fourth section to charge higher rates at intermediate points, but the line or route requesting relief must be shown to be circuitous to a marked degree, usually not less than 15 per cent greater than the distance of the short line between the same points when based solely on the ground of a circuitous route. The commission also usually denies relief where the carriers are extremely circuitous, in the absence of special circumstances, believing that from an economical standpoint the carriers are not justified in meeting rail competition via unreasonably circuitous routes.

"WHERE THE RELIEF RELIED UPON IS BASED UPON THE GROUND OF WATER COMPETITION.

"1. That the competitive rate which is met at the more distant point is a compelled rate and in and of itself lower than a reasonable rate.

"2. Show what steamers or boats are actually plying between the water points, and their tonnage capacity or capacities.

"3. Whether or not traffic is actually moving via the water lines, the volume of such traffic, and the names of the water lines.

"4. The shortest distance from, to, or between intermediate points at which higher rates are maintained via the rail carriers, the names thereof, and the rates charged at such points, and the highest rate applying from, to, or between intermediate points.

"5. A showing as to the reasonableness of the rates at the intermediate points.

"6. What would be a reasonable rate to be established at the terminal point to be the maximum at intermediate points.

"WHERE MARKET COMPETITION IS RELIED UPON AS THE GROUND FOR RELIEF.

"1. That the competitive rate which is met at the more distant point is a compelled rate and in and of itself lower than a reasonable rate.

"2. The name of the other markets from which the competition is met.

"3. The distances from the other markets as compared with the distance from the market of applicant carrier.

"4. Whether or not the rates from the other markets are in accord with the provisions of the fourth section.

"5. The volume of traffic to points of destination from each of the two markets, if possible.

"6. Whether the market competition at the farther distant point is consistently met at intermediate points of origin; if not, what reasons exist for not permitting such intermediate points of origin likewise to meet such competition.

"7. A showing as to the reasonableness of the rates at the intermediate points.

"8. What would be a reasonable rate to be established at the terminal point to be the maximum at intermediate points."

In addition to the above information, any other circumstances which are relied upon as constituting a special case within the meaning of the law warranting fourth section relief should be shown.

All the relief desired under an application should be specifically referred to. Where relief is desired from "related points" or "group points," the points or groups should be defined.

The fact that a point is a large producing or consuming market and that intermediate points are not consuming or producing points is not considered by the commission as a sufficient reason for relief from the fourth section. Rule 77 of Tariff Circular 18-A was promulgated for the express purpose of covering such situations and obviating the necessity of publishing paper rates from intermediate points.

By the Commission, Division 2.

GEORGE B. MCGINTY, *Secretary*.

WASHINGTON, D. C., December 18, 1917.

Mr. LYON. They have divided the subject into three sections, where the relief sought is based upon the ground of a circuitous route—what we call railroad competition. The second is where the relief relied upon is based upon the ground of water competition, the subject I am particularly interested in. The third is where market competition is relied upon as the ground for relief.

I may be better versed in the terms which Mr. Mann has referred to than some of the committee, so if I go a little into detail it is because I think you have not had as much experience as I have had in this matter. Generally, market competition means the competition of a man here at A desiring to sell something at B. C is a place of production somewhere else—maybe in Belgium, China, Ohio, Nevada, or Colorado. He has got the same thing as the man at A which he wants to sell to the man at B. That market competition is the effort of the man at A to meet at the point B the salesman from C in the market B. That is what I conceive to be market competition. It is illustrated in this case by steel works located in New Jersey adjacent to New York Harbor, steel works at Pittsburgh, Chicago, and Pueblo, Colo. Now, those four sources of steel are in competition in San Francisco to sell to the merchants of San Francisco. The competition of Colorado with the man in New Jersey is called "market" competition; and the railroads serving Colorado say to the commission, "We want to sell to the merchant in San

Francisco, in competition with the man located at the pier of the American-Hawaiian Steamship Co. in New York, and we ask the commission to allow us to make such a rate to San Francisco as will permit us to meet that market competition, and at the same time charge a higher rate to Reno or to points which are intermediate."

Now the commission set forth six specific things.

Mr. HAMILTON. Now, did the commission make rates to permit market competition?

Mr. LYON. Yes, sir.

Mr. HAMILTON. How would it manage between a competitor on the Atlantic seaboard, or near the Atlantic seaboard, and a competitor near Chicago competing for a market, we will say, at San Francisco?

Mr. LYON. How would it do that?

Mr. HAMILTON. How would it manage its rates? Suppose that one competitor was near the Atlantic seaboard and another competitor was near Chicago, for illustration, competing for a market at San Francisco; how would it adjust rates between those two competitors?

Mr. LYON. I do not know. They adjust them but I do not know the method.

Mr. HAMILTON. They did adjust them?

Mr. LYON. Yes; they allowed a 55 cent rate from Chicago on steel to the Pacific coast, to meet the competition of water lines from New York harbor to San Francisco. At the same time, I think the railroads maintained a 75-cent rate from New York, and I know for a long time they maintained the same rate from Pittsburgh. Upon application of the Pittsburgh interests they afterwards reduced that 75-cent rate to 65 cents.

Mr. LYON. The moving cause that made the Santa Fe Railroad and other railroads terminating at Chicago to apply to the commission for a 55-cent rate was the fact that the competitor of the man in Chicago, located in New Jersey, on New York Harbor, could get this low rate by water, and although the competition was at New York, the New York shipper did not get the advantage of it by rail, because the railroads did not reduce the rate from New York to San Francisco, to meet the competition of the boat operating between New York and San Francisco. The railroads from Chicago applied to the Commission asking that they from Chicago might reduce the Chicago rate to San Francisco to meet the competition of the New York manufacturer who had the advantage of a water route. That is what I understand to be "market competition," and I think that is a good definition of it, but it would apply with equal force if there was no water engaged in it. If a man in Pittsburgh wanted to sell something in Sioux City, you could make a rate from Chicago to Sioux City to compete with the man from Pittsburgh to Sioux City; or the way it is generally made, the man from Pittsburgh will be given a rate that will permit him to deliver goods in Sioux City in competition with the man from Chicago to Sioux City.

Mr. HAMILTON. Don't you think that is a good principle to pursue?

Mr. LYON. No; I think nobody is wise enough—understand, my views of this are very different from those of the men who have ordinarily been before the Interstate Commerce Commission—I think that no one is wise enough to decide that.

Mr. HAMILTON. Well, now, suppose you were going to put up a large building somewhere, and you know that if you could get certain

structural steel you could build your structure cheaper, a good deal, but you were restricted in the territory that you could draw from by reason of rates. You would want, I assume, to be permitted to draw on the larger territory, and would therefore feel justified in asking for a competitive rate.

Mr. LYON. Well, that is the old doctrine, the fight between Democrats and Republicans, whether you want protection or not. I am against it, and I do not think it is a wise doctrine. I think if a man at Chicago has steel that will build a building in Sioux City, and I am going to do the building in Sioux City, I do not think that I have a right to go to a public body and ask that the rate from Pittsburgh be reduced in order that I may draw steel from Pittsburgh against the man from Chicago.

Mr. HAMILTON. Then, the man in Chicago might charge you what he pleased.

Mr. LYON. Why shouldn't he? Is that a crime?

Mr. HAMILTON. Well, you might like it, but how would it be for the public at large?

Mr. LYON. I can not conceive that they would have any just objection to it. Chicago is not limited to one steel plant.

Mr. HAMILTON. But suppose that there might be only one steel plant within the radius which you might possibly draw from, and then you would be at the mercy of that one steel plant.

Mr. LYON. Why, if the man in Pittsburgh really wanted my business at the rate—and the rate is fixed there—he will cut his price to meet the Chicago man. It is purely a question of whether the money shall be taken out of the coffers of the railroad or whether it shall be taken out of the coffers of the man producing steel.

Mr. HAMILTON. Pardon me, but don't you agree that at the point where the Pittsburgh man can not compete, at that time the Chicago man—assuming that equal capital is invested, that the plants are on the same footing—the Chicago man must inevitably beat the Pittsburgh man? So you, in the construction of your building, whatever it may be, are driven to take whatever terms you can get from the Chicago man, aren't you?

Mr. LYON. Yes; and I am against—when I find that situation I am against going to the railroads and asking this public utility to accept less than a reasonable rate to benefit me. I think that is not good public policy, but the country has always thought so.

Mr. HAMILTON. The public utility is not obliged to accept the terms.

Mr. LYON. But it is willing, because it can do so at this out-of-pocket cost. It has got its plant in operation, and if it can take the business away from the Chicago man and haul it from Pittsburgh it gets this gross income into its own coffers, while the railroad operating from Chicago loses it. Both of them can not haul the steel.

Mr. HAMILTON. I see your point of view.

Mr. LYON. I do not mean to confine my answer to the interest of the railroads. To me that is secondary. What I am considering is what I conceive to be the public injury. The value of steel in Sioux City is the Chicago price plus transportation to Sioux City, and the Pittsburgh price plus transportation to the same destination. In my opinion, a wrong is committed against the Chicago steel man if the railroad is allowed to charge the Pittsburgh steel man a less than

reasonable rate for the service from Pittsburgh to Sioux City while at the same time charging the Chicago man a reasonable rate. Both should be charged a reasonable rate, and reasonableness, in the sense I am using it, does not depend upon the necessities of the man at Pittsburgh. It should be measured by the service the railroad performs. Merely because Pittsburgh is 500 miles more distant from the consumer than is Chicago no more entitles the steel producer in Pittsburgh to a less than reasonable rate, measured by the service of the carrier, than he would be entitled to a less than reasonable rate because his steel plant was inefficiently operated as compared with the Chicago plant, or because the raw material cost him more in Pittsburgh than in Chicago. The reduction of the rate from Pittsburgh to Sioux City, under such circumstances, has the direct effect of adding just that much to the value of the steel in Pittsburgh. It transfers the burden upon the Pittsburgh steel man to the shoulders of the railroad operating between Pittsburgh and Sioux City if the steel is moved, and it has the direct effect of decreasing the value of the steel in Chicago to the extent necessary to meet the artificial competition created between Pittsburgh and Sioux City.

Rates in this country have almost uniformly been built upon this theory both by the railroads and the commission. The measure of the rate is not the service rendered by the carrier, but, as both railroads and commissions speak of it, it is "the value of the service" to the shipper. In other words, find out what the shipper needs and then make the rates to square with that necessity so long as the railroad earns at least this indefinite and intangible thing, "the out-of-pocket cost."

The effect of this method of making rates has been to inordinately increase the ton-miles in the United States. About 300,000,000,000 ton-miles are made by the railroads every year. A large number of them grow out of such hauls as that above illustrated, from Pittsburgh to Sioux City, because of the necessity of the Pittsburgh man. The same steel could be moved from Chicago with one-half the ton-miles required from Pittsburgh, but because the value of the service to the Pittsburgh man will not justify a reasonable rate, measured by railroad service, a reduction is accorded him, and a thousand ton-miles are piled up in the place of 500.

In a recent case before the commission figures were compiled by that body which showed that if in 1916 the coal moved to Lake Erie ports for transshipment by water to the Northwest had all been moved from the Pittsburgh and Ohio districts, which are within 150 miles of those ports, instead of having been moved in large quantities from West Virginia and Kentucky, 400 miles from such ports, the saving in transportation would have been about 1,500,000 car days. This coal was moved from West Virginia and Kentucky on the "value of the service to the shipper" basis. The rate was 25 per cent higher than from Pittsburgh and Ohio, while the distance is 166 per cent greater. This charging of a rate one-fourth greater for three times the service, because that rate represented the "value of the service to the shipper" with his mines in West Virginia, measures the unnecessary burden placed upon the shoulders of the ultimate consumer.

You will bear in mind that the consumer is not vitally concerned as to the place of origin of the fuel he consumes. The bill he finally

pays is the cost to the railroad plus a reasonable profit to the owners of the railroad. If the coal moves an unnecessary mile in reaching his furnace, the consumer in the last analysis has to pay for such folly. The shippers and the railroads and the public regulating bodies are all prone to argue that the consumer is deeply concerned in competition. The fact is, the railroads and the shippers are most interested in that feature of supplying the consumer. The consumer is best served when the things he needs are supplied from that source of production which entails the least expenditure of energy. The wise men who now sit in judgment to decide the value of the service to the respective producers who are endeavoring to supply the consumer, would be rendering a much greater public service to him if they would lend their energies to approximating the costs of the several services by the railroad and adding thereto a reasonable profit and then let competition exhibit itself in the efficiency of the producers and in the shrinkage of profits, instead of manipulating railroad rates to offset deficiencies in production.

It gets off the subject that I was discussing, but those have been my views a long time on the subject of any body of men being wise enough to sit in judgment on market competition. The commission does it all the time and they are supported by the courts. And I think—if I may divert for a moment—that is one of the troubles with the transportation system of the country to-day, the reason it is so tied up. The railroads for 75 years, and the commission for 30 years, supported by the courts, have indulged in this market competition from long distance points, so that when we find ourselves at war, instead of our supplies being drawn from the sources from which they naturally should be drawn, we are moving cars and locomotives 200 miles, when there is the same quality of material within 100 miles. And Mr. McAdoo this very week has issued a drastic order that coal shall not be hauled under the market competition theory. They say if Chicago wants coal they must take it from Illinois, within 300 miles of Chicago, and must not go to West Virginia, 600 and 700 miles, for the same number of what he calls B. t. u's—British thermal units—of coal. Why? Because it is against the public interest. I assume Mr. McAdoo is acting in the public interest. But that is getting into the broad subject.

Mr. SANDERS. In that very connection, isn't it a well-known fact that two years ago there was a report made on the fact that the railroads from Illinois hauled coal into Kentucky and then hauled coal from Kentucky back into Illinois?

Mr. LYON. Oh, that is going on all the time, cross-hauling. Mr. McAdoo is stopping that as far as possible.

Mr. SANDERS. Just one other question in the line of Brother Hamilton's interrogations. If he is going to open these two city builders to the competition of Pittsburgh, isn't he going a little bit against his own principles? Why not open it to the competition of the English steel makers?

Mr. HAMILTON. Well, we could very easily precipitate a tariff discussion here. [Laughter.]

Mr. LYON. Well, to give Mr. Hamilton a very concrete illustration, and then I will get back to the main subject—

The CHAIRMAN (interposing). I think, Mr. Lyon, it is very well for members of the committee who do not understand what market

competition is to have it explained so that they may understand it; so I have no objection as to how much you explain it to those who do not understand it.

Mr. LYON. I was very much interested in Commissioner Clark's testimony before the Senate committee. The intermountain people are here asking for a change in the law and Mr. Clark pointed out what had been done for the intermountain country by permitting a 55-cent rate on shipping from Utah and Nevada, or some State out there, into Chicago, with a 75 or 85 cent rate to the Missouri River. That is a violation of the fourth section. Mr. Spence, traffic director of the Southern Pacific, who was on the stand here the other day, made the same illustration. I asked Mr. Spence why he made a 55-cent rate to Chicago. I didn't know that I would be before Gov. Sanders a few days later, but I was thinking of the Louisiana sugar producer. He said, "So that the Utah man may sell sugar in Chicago in competition with Louisiana and New York." "Well," I said, "Isn't it for the purpose of displacing Louisiana sugar?" He said, "Yes."

Mr. HAMILTON. Not displacing, but competing.

Mr. LYON. Well, people are not going to eat more sugar. There is a certain amount of sugar consumed in Chicago, and here Louisiana and New York were supplying it, we will assume.

Mr. HAMILTON. But there enters another element. One is cane sugar and the other is beet sugar. Beet sugar comes to the market in October and cane sugar comes on the market at another time.

Mr. LYON. The fact that the sugars are marketed at different times, if that is a fact, would constitute a ground for the commission declining to permit a violation of the first paragraph of the fourth section, but it could not constitute a ground for an exception. The only conceivable ground for permitting the 55-cent rate to Chicago while charging 85 cents to the Missouri River is because there was market competition at Chicago from other sources of supply than Utah, and the railroads must have convinced the commission that unless it authorized a departure from the fourth section, that the Utah sugar would not move to the Chicago market. This was a case where the rate was made for the Utah man based upon the "value of the service" to him. It was less than a reasonable rate. His competitors from New York and Louisiana were paying, we assume, a reasonable rate, although it sometimes happens in this mad scramble for tonnage that the railroads bring forth the fetish of competition from all three sources at the same time and make less than reasonable rates from all of them. However, assuming that New York and New Orleans were paying reasonable rates on sugar, the effect of granting the Utah man a less-than-reasonable rate was to displace New York and Louisiana sugar with Utah sugar. If it did not accomplish that result, it was an idle thing to make the 55-cent rate. If it did accomplish that result, to the layman it would seem that New York and Louisiana would at least feel injured.

Mr. SANDERS. Anyone that knows anything about it and takes beet sugar in preference to cane sugar needs education. [Laughter.] The only way they can keep Chicago people from eating cane sugar is by putting on a differential to keep the cane sugar out.

Mr. HAMILTON. Or by a Democratic policy which would prohibit Louisiana from producing cane sugar. [Laughter.]

Mr. LYON. On the subject of water competition the Interstate Commerce Commission in this circular of December 18, 1917, in prescribing the six matters which the railroads should prove to the satisfaction of the commission whenever they applied for an exception to the fourth section did not include anything in regard to whether the rate to the terminal point would be above the cost, the out-of-pocket cost. I wanted to call your attention to that. It does not call for that information. These are the six things:

That the competitive rate which is met at the more distant point is a compelled rate and in and of itself more than a reasonable rate.

That has nothing to do with out-of-pocket cost. The rate may pay four times the out-of-pocket cost, and under the decision of the commission and the court may still be reasonable. It may be less than out-of-pocket cost and be reasonable.

Mr. STEPHENS. They base reasonableness on competition?

Mr. LYON. There is no definition of what they base reasonableness upon. They have never expressed what they base it upon. Nobody ever has. No one can tell you what a reasonable rate is.

The **CHAIRMAN.** Do you have any comment to make on that portion of that statement or the circular referring to water competition?

Mr. LYON. I want to read those six items. That is the first one. The second one is:

Show what steamers or boats are actually plying between the water points, and their tonnage capacity or capacities.

Third, whether or not traffic is actually moving via the water lines, the volume of such traffic, and the names of the water lines.

Fourth, the shortest distance from, to, or between intermediate points at which higher rates are maintained via the rail carriers, the names thereof, and the rates charged at such points, and the highest rate applying from, to, or between intermediate points.

Fifth, a showing as to the reasonableness of the rates at the intermediate points.

Sixth, what would be a reasonable rate to be established at the terminal point to be the maximum at intermediate points.

I call attention to the fact that there is nothing there that refers to the out-of-pocket cost, and nothing there to show whether the terminal rates would be more or less than the out-of-pocket cost.

The **CHAIRMAN.** Does that apply to water competition only, or does it apply to rail competition or market competition.

Mr. LYON. What I read to you applies to water competition, but they have other data in there when they want to meet rail and market competition, other factors that enter into it.

The **CHAIRMAN.** All in the same circular?

Mr. LYONS. All in the same circular. But reading the decisions of the commission aside from this circular, they have intimated and have often used it in the course of their decisions, as being something above out-of-pocket cost. But not only do these water lines have to meet the out-of-pocket cost from the places that they touch, like from New York to San Francisco, it isn't the out-of-pocket cost of the road operating from New York to San Francisco that the Luckenbach Steamship Co. has to meet. The steamship lines may make the lower rate first. The railroads gradually come down, but the out-of-pocket cost is the minimum the commission will allow the railroads to approach in reaching out for the business of the water lines. It

is not the out-of-pocket cost only of the roads between New York and San Francisco that the boat lines have to meet. Take the railroads operating from Pueblo, which is two-thirds of the way to San Francisco—about 1,500 miles to San Francisco. The commission will allow the railroads operating from there to San Francisco to violate the fourth section in order to compete with the Luckenbach Steamship Co. operating from New York.

The CHAIRMAN. Will you repeat that, please?

Mr. LYON. I said the commission will allow the railroads operating from Pueblo to San Francisco to make a rate—

The CHAIRMAN (interposing). From Pueblo?

Mr. LYON. From Pueblo to San Francisco, that will meet the competition of the Luckenbach line moving the same materials from a plant located in New Jersey to San Francisco, so long as the railroads operating from Pueblo to San Francisco do not go below the out-of-pocket cost plus a reasonable return.

The CHAIRMAN. In order that Pueblo may sell products in San Francisco as against the man in New York?

Mr. LYON. Yes; to meet that market competition. That begins with water competition at New York, and then market competition from Pueblo is applied to meet it.

The CHAIRMAN. But market competition may be market competition in reference to competing railway lines or water competing lines?

Mr. LYON. Yes; either one. I think that Examiner Thurtell stated during the course of these proceedings that if the competition came from Belgium to San Francisco on steel products, that the commission would be justified—and I think it would under their decisions and under the decisions of the courts—in making a rate from Pueblo to San Francisco to meet competition from Belgium.

The CHAIRMAN. They did also in reference to Australian wool, as against wool produced in the United States.

Mr. LYON. Yes. I am only giving you that to show you the difficulty under which the water lines labor in order to compete for this business. It is well enough to say, "Well, the railroad lines do not get this relief from the fourth section until the water lines lower the rate," but the water lines know all the time that they have this threat staring them in the face. The commission said in this decision of June 30, 1917, after denying carriers the right to make lower rates across the continent because the water competition had actually ceased:

When the water competition again becomes sufficiently controlling in the judgment of the carriers to necessitate the reduction of the rates to the coast cities to a lower level than can reasonably be applied to intermediate points, the carriers may bring the matter to our attention for such relief as the circumstances may justify.

In other words, we know that as soon as we go back into this transcontinental business, the moment we get 1 ton of freight the rail carriers may come before the commission and say, "the time has come, Mr. Commissioners, when these water lines are getting too much of this traffic, and we want protection."

The CHAIRMAN. Let me interrupt you for a moment. Suppose the traffic east and west from the Pacific to the Atlantic coast requires, say, that all of it going either by rail or water could be carried by 100 ships, but if the railroads carried half of it, then 50 ships would

carry it. Now, then, suppose that all the shipping companies have altogether 50 ships in that trade, but knowing that the railroads will be permitted to meet any rate they make, there therefore will be no inducement to increase the number of ships and to increase competition between shipping companies, because the business will not increase with the increased facilities.

Mr. LYON. That is undoubtedly true. I want to distinguish very particularly between competition by railroads that really meets water competition—that is, where the railroads make the same rate to intermediate points that they make to terminal points and the roads that compete through violation of the fourth section. I think the Yazoo & Mississippi Valley, down by the Mississippi River, does not violate the fourth section. Under the exceptions to the fourth section, as I look back upon the history of this country, it has had the inevitable result of driving the railroads and the steamship companies into a combination.

Mr. STEPHENS. Mr. Lyon, wouldn't it be infinitely more practicable and reduce a great many perplexing problems to simple ones if the railroads and steamship lines were allowed to combine, and then the Commerce Commission to regulate the rates and keep them down to a reasonable figures, rather than to try to adjust differences between railroads and water lines and to keep this balance so that they can both live and be properly maintained?

Mr. LYON. You have asked me a very big question which I would not like to pass upon without full consideration. I have some views on the subject which I will be glad to give you. I have always thought that the clients which I represent, large concerns with a large number of ships, would not object to regulation, because large concerns, both railroad and shipping, generally, do not object to regulation. It is the small ones that are wiped out by regulation. However, if you attempted, it seems to me, to say to a tramp steamer owned by John Smith, that comes into the harbor of New York, that he can not take a load of stuff from New York and haul it to San Francisco, Savannah, or Norfolk at such a price as he sees fit, I would not want to say offhand that it would be a good thing to have a commission to fix his rates and require that he file his rates.

I think it is a very serious public matter. Suppose a man owns a rowboat or owns a little steam launch. Would he be subject to such a law? Those are the questions that we get into, and I can't answer them. I am afraid it would be a dangerous doctrine. But I would not mean to say for a moment that I could not be converted to another theory.

The CHAIRMAN. Congress has settled that already, because they won't allow a railroad company, doing a transcontinental business, to own a steamship line in competition with itself at all.

Mr. LYON. Yes: the conditions got so bad that the Interstate Commerce Commission is now given authority—or is directed by Congress, as I understand it—not to allow a railroad to own a steamboat line which competes with itself.

The CHAIRMAN. Not to allow them to own it even?

Mr. LYON. There the discretion was with the commission: but on the Panama Canal Congress left no discretion with the commission. Congress acted itself. It said: "You shall not do this through the Panama Canal." But—to get back to the subject I was speaking of—

it seems to me it has resulted inevitably in combinations of water lines and railroads. Now, I have no definite information. I could not give you the exact facts to show that the railroads and the water lines were combined; but I think if the committee would take that very extensive report, gathered by some committee on interstate commerce of the Senate, in regard to lake competition and lake lines, showing the ownership of all of the terminals by the railroads at Chicago, Buffalo, and Cleveland, I think they would find it substantially demonstrated that there was no water competition on the Great Lakes. The railroads control practically the entire system of boats operating on the lakes; and I think the Interstate Commerce Commission has tried during this war or very recently to pull apart their boat lines and railroads, but nobody knows yet whether it will be to the public interests or not.

Mr. STEPHENS. The indications are that it would not, aren't they? The indications now are that it has been against the public interests.

Mr. LYON. Yes; I think the indications are that the effect of allowing the process to go along for a series of years and allowing the railroads to dominate the situation—owning all the terminals, all the wharves, all the tracks, and to get control of the entire situation—and, then, you enter upon the process of pulling them apart, undoubtedly leads to public injury at first. Whether it is permanent is another question. But I am only stating now the inevitable effect of the railroads being able to take business away from the water lines by the violation of the fourth section. I think that is largely the situation on the Atlantic seaboard. I do not know how far the different lines are owned by the railroads, but you know that a great many of them operate very closely with the railroads operating into New York, and Norfolk from Boston, and to Savannah and different points. There are not many really independent water lines. They are tied to the railroads. Now, we talk about all this business going into Texas. The Southern Pacific, which operates in Texas, with its feeders, has a railroad at Galveston—

Mr. SANDERS (interposing). Just one question right there—I did not bringing it out in examining that Galveston man the other day. Everyone knows that the Morgan Line, running from New York to Galveston, is owned by the Southern Pacific.

Mr. LYON. Yes.

Mr. SANDERS. Now, there is another line which runs from New York to Galveston called the Mallory Line. Do you know anything about the statement or rumor, whatever your might call it, about the Mallory Line and the Santa Fe?

Mr. LYON. The rumor is that they are very closely operated. Whether the Santa Fe owns stock, or whether anybody in the Santa Fe owns stock in the Mallory I have no information personally, but the Mallory operates in connection with the Santa Fe, just as the Atlantic Steamship Co. operates—I believe that is the name of the Morgan Steamship Co.—operates in connection with the Southern Pacific, and when the Southern Pacific got this reduction of rates via its lines from the West to the East, what we call the 40-cent scale of rates, the Santa Fe immediately put in an application in connection with the Mallory Line for the same reduction. And I have understood that those are the two big companies that do the business from New York to Texas points.

Mr. SANDERS. Irrespective of whether they own the ships in the Mallory Line or not, we do know that there is a very close working agreement between the Mallory Line and the Santa Fe.

Mr. LYON. Absolutely. The tariffs are on file with the Interstate Commerce Commission, I understand, and the application must have been a joint application of the Santa Fe and the Mallory Line, just like it is between two railroads.

Mr. WOOD. May I be permitted to say there, Mr. Chairman, that there are practically the same through routing arrangements in connection with the Mallory steamship service from New York to Galveston and the Southern Pacific lines out of Galveston that there are between the Mallory steamship service to Galveston and the Santa Fe lines out of Galveston. In other words, there is no restriction, so far as the Southern Pacific lines are concerned, against the Mallory Line and in preference to the Morgan Line, which is owned by the Southern Pacific.

Mr. LYON. Well, I did not mean to intimate at all that there was any competition between these through routes.

Mr. SANDERS. There is no competition. Probably both of them own both routes.

Mr. STEPHENS. That would indicate that there was no competition.

Mr. LYON. Yes.

Mr. STEPHENS. Now, Mr. Lyon, you do not think that the conditions of the country now, in the railroad world, indicate that there ever will be any more competition in railroads, do you?

Mr. LYON. No; my judgment is I think we will have Government ownership of railroads.

Mr. STEPHENS. And railroad competition is gone. That is the most emphatic thing that anybody ever thought about.

Mr. LYON. Yes, sir.

Mr. STEPHENS. That competition between railroads is gone.

Mr. LYON. Yes, sir.

Mr. HAMILTON. Well, that is conjectural.

Mr. LYON. Yes.

The CHAIRMAN. Mr. Kruttschnitt stated positively before this committee that there was no competition in rates, but only competition in service.

Mr. LYON. I don't see how there can be competition with the Government operating them all, as they do now.

Mr. HAMILTON. It runs in my mind—I may be in error—that we had testimony before this committee to the effect that certain companies, coastwise corporations—that is, doing a coastwise business—divide the ports of the United States, Atlantic and Gulf ports among them, and made their own charges to the ports which they enter; and that the so-called competing lines did not enter those ports. So that each line had a monopoly as to those particular ports and could charge what they pleased.

The CHAIRMAN. Well, they all touch at New York, you know.

Mr. HAMILTON. I am not talking about New York. I am talking about the Atlantic and Gulf ports south of New York.

The CHAIRMAN. Well, there was evidence that several coastwise companies that did business between those ports did not touch at the same port.

Mr. STEPHENS. They would be very stupid if they did. They would get about a bale of cotton apiece, and there would be no money in it for any of them.

Mr. HAMILTON. It developed that they had an understanding among themselves.

Mr. STEPHENS. And they should have.

Mr. HAMILTON. Not to enter the same ports, and that they did charge what they pleased.

The CHAIRMAN. And that they, nearly all of them, did have docking facilities located with reference to some railroad that enters that particular port.

I would not undertake to state what it is now, but that was stated in the consideration of the Panama Canal bill.

Mr. STEPHENS. It is simply a practical way, and it should be regulated so that they can live and so that we can have transportation facilities.

Mr. LYON. Yes. Of course, that is not an immediate question here. Even if that were done, assuming what you say is true, that they should be regulated, I still think Congress would have this question before it as to whether it wanted the transportation to be by water lines or whether it wanted it to be by railroad. I think it would have that question to decide. I think that is the question here now. The reason I am here is not to advise you, as I said. My company does not want to advise you; they think the question is too big for a corporation to step in and advise Congress what to do; but we do want to say that if this 6,000,000 tons of freight is to move from the Atlantic to the Pacific coast—if you allow these exceptions to the fourth section—it will take a certain amount of tonnage from the water lines, and you will have fewer vessels. As the chairman said, if there are 50 vessels there now, operating—as there were substantially that number, I believe, just before the war started, before the slide in the Panama Canal—and if there is enough business for a hundred vessels, of course, if they allow these violations of the fourth section there would not be any increase in the number of vessels. That would be a question for Congress to decide, whether it will want to increase the number or not.

I think Mr. Spence made a magnificent argument—the traffic director of the Southern Pacific Railroad—in behalf of the railroads, and I think it is one that Congress ought to consider, but I do not think we ought to be hypocritical about this thing.

We talk about wanting a great merchant marine. Then we put the means of establishing it in the law. Now, if we don't want it, and say that it is to the interest of this country to develop the railroads, we have got the railroads anyway; we have got the presidents and general managers and traffic managers of the roads; they can do more business than they have done, and it is to the interest of this country to have the railroads carry all the business that can be carried, and simply let a tramp steamer come in now and then when there is a flood or something of that kind and take the extra business; if that is the policy of Congress you can line up your business accordingly. But if you want a merchant marine that is not the way to create it.

The CHAIRMAN. We do not allow tramp steamers to do a coastwise business—or did not.

Mr. LYON. Well, I did not know that.

The CHAIRMAN. Unless they are American-owned tramps.

Mr. LYON. There are some American-owned tramp steamers.

Mr. STEPHENS. You think these exceptions to section 4 are sufficient to really reduce the number of steamships operated?

Mr. LYON. Why, the commission said on this southeastern case, "We will allow these railroads to continue these lower rates to the more distant points, because if we put them upon a reasonable basis the steamboats will return upon the Mississippi River." That is their position. I do not see how you can get away from it. It is inevitable.

Every ton of freight the Morgan Line hauls is taken at a great sacrifice. They can not afford to run their steamships from New York to Galveston if upon a business basis. But the Southern Pacific Railroad, operating through the United States, can stand the loss. They want to keep it up for the future, but no independent concern moving freight from New York down to Galveston—any really independent company—can afford to do that, because they can get much better returns for their boats elsewhere.

The CHAIRMAN. Mr. Lyon, isn't this somewhat illustrative of what is being done: We tax the people to provide water facilities for transportation and then we tax the railroads by reducing the earnings that they would get in order for them to prevent the utilization of these water facilities that have been created by taxation?

Mr. LYON. That is exactly the result of exceptions to the fourth section; Congress appropriates a billion and a half dollars to improve public waterways, and then the commission grants exceptions to the fourth section so that the railroads will take some of the business that would otherwise go upon these improved waterways. That is the very purpose of it. It can have no other.

The CHAIRMAN. The committee will adjourn until 10.30 to-morrow morning.

(Whereupon, at 4.40 o'clock p. m., the committee adjourned until 10.30 a. m. Saturday, Mar. 30, 1918.)

LONG-AND-SHORT HAUL ON RAILROADS.

SATURDAY, MARCH 30, 1918.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C.

The committee this day met, Hon. Thetus W. Sims (chairman) presiding.

The CHAIRMAN. The committee will come to order. I want to state to begin with that we are compelled to close these hearings not later than 5 o'clock to-day. We can not go over into next week. I do not want to abridge anybody, or anything of that sort, but I do not know when we can give hearings on this bill again. We do not want to shut anybody off, and I would like very much if the gentlemen who are to be heard to-day would arrange among themselves as to who is to be heard first, and about how much time each will take, so as to enable all of them to be heard as fully as possible. I know the gentlemen who are to be heard can not keep the members of the committee from interrupting them and using more time than they otherwise would. I do not believe the committee finished with Mr. Lyon yesterday, and so now the first thing we will do will be to let Mr. Lyon finish his statement. If you have anything that you wish to state, not in response to interrogatories, I will ask the committee not to interrupt you until you finish any statement that you want to make.

Mr. LYON. Mr. Chairman, I have no prepared statement. I have only a memorandum.

The CHAIRMAN. I mean if you have any statement you want to make.

Mr. LYON. Yes; I want to make an additional statement to what I have made.

The CHAIRMAN. Go ahead and make it, then, and then you will be interrogated afterwards.

FURTHER STATEMENT OF MR. FRANK LYON, ATTORNEY FOR THE LUCKENBACH STEAMSHIP CO.

Mr. LYON. As I was stating yesterday, the position of the company I represent, the water line, is that it objects, and we think it is bad policy to leave to any administrative body to determine which method of transportation shall be used in the movement of freight, and as we read the fourth section, as it now stands, and as we read the decisions of the commission, as they have been rendered, the commission is a body that indirectly determines what method of transportation shall be used for the transportation of freight, whether it shall be by water, or whether it shall be by rail, and through its decisions deter-

mines the amount of traffic that may move by either. They do not make such statements in their decisions, but when we take the decisions, take these exceptions to the fourth section, and look into the purpose of the railroads in asking for relief from the fourth section, it leads to no other conclusion than that the commission sits in judgment substantially as to whether the water line shall exist at all, or as to how much of a certain traffic between given points the water line shall take against the rail lines. That is the effect of their decisions, and I say that is the purpose of their application.

I am not here to criticize the Interstate Commerce Commission in exercising its functions that way. I think the way Congress has left the fourth section, as construed by the courts in the last 20 or 30 years, the commission has that authority, and I think they have been rendering decisions as it has been laid down to them by the courts, and laid down to them by the practice of railroads in the last 75 years. So I say it is not in criticism of the commission, but it is in criticism of the law, as it stands. We think the only remedy, if there is to be a remedy, is through the action of Congress. I am not here again to say there should be any remedy, but I am here to call attention to the situation, and then Congress, of course, will determine for itself whether it shall continue as it has in the past, with the commission practically the determining factor as to whether there shall be water transportation or rail transportation.

In that connection I call attention to the language of the commission in the transcontinental cases, decided on June 30, 1917, the question now between the railroads and my clients, the steamship line, about this traffic and transcontinental business. The commission says: "Neither is it our purpose to permit the maintenance of rates to or from Pacific coast points at a level that will render this service unattractive to the boat lines." In other words, by that language the commission says: "We will determine when business is attractive to the boat lines, and when it is not attractive to the boat lines, and we state that this commission, as it is organized on the day this opinion was written, is going to have this policy, that it shall not make it unattractive to the boat lines."

We think that no such power should be given an administrative body. We think that that should be determined by Congress, and if it wants to encourage this coastwise shipping and this lake shipping and this river shipping, that it should not allow exceptions to the fourth section, and not leave the law so that the commission may hold that water competition constitutes a special case under the fourth section. If it does, you will get just that kind of an opinion that the commission will decide when it is attractive, and when unattractive for the boat line, and when they decide that, they in effect make a decision which we think is detrimental to the merchant marine.

Yesterday I referred to the Alabama-Midland case, decided by the Supreme Court, the volume of which has been given, which held that the Interstate Commerce Commission should take into consideration in determining the relief from the fourth section, the fact of potential water competition. That means, not boats actually doing business but the possibility of boats. That because the oceans wash the shores at New York and San Francisco, creates potential competition, and that that factor should be taken into consideration in determining whether there should be relief from the fourth section.

I wish also to call to your attention the uncertainty of steamship rates. I think that should not go unnoticed. There is no certainty whatever about steamship rates. The ocean is a public highway, and any steamer may come in any day and take a cargo between any points at any rate it sees fit. If it is a ship, like those which are being built on the Pacific coast, for the purpose of carrying supplies to Europe, she may come East loaded with canned goods or some California product at any kind of a rate, merely to have ballast. Because there is no certainty about steamship rates, when these railroads reduce their rates to meet steamship competition, they are reducing them to meet an unstable situation. You never know from day to day what the rates will be, and I think it is an admitted fact that in the same steamship on the same trip the same commodity is carried at different rates. Of course, the more stable these steamship line get and the more certain its ports of call and ports of destination become the more the rate approaches stability, but I think there will never be a time when there will be absolute stability of water rates.

Another bad effect, it seems to me, from the application of the fourth section, as it is now written and as applied by the commission and the courts, is that it inevitably drives to combination between the railroads and the steamships.

The CHAIRMAN. Does what?

Mr. LYON. Inevitably drives to combination between the railroads and the steamships. As soon as a railroad company knows of those who are contemplating entering the steamship business or as soon as a steamship is put on the route, we will say, between New York and Savannah and makes rates such as would attract business from New York to Savannah, which theretofore had been going by rail, the railroads can go to the commission and show that there are steamships operating and carrying tonnage, and thereupon the commission would allow the railroads to operate on a less rate to Savannah than they do to intermediate points and lower than operated by the steamship companies.

Under these conditions prospective owners and operators of steamships hesitate to enter the business, because as soon as they put in the rate the railroad rate goes down to get back the business, and then if they reduce the rate again, they go to the commission a second time. Then the rate may be further depressed, so long as it does not go below the out-of-pocket cost. That is continued until it arrives at what either the commission or the railroad decides is a fair division of the business. That is the effect of it. I say that inevitably drives the steamship lines and the railroads into a conference around the table, whereby, instead of entering this fight with each other for business, they will enter into some gentleman's agreement as to what the rate shall be. I think that is not in the public interest.

Of course, the question next comes up, "If the railroads do not compete with them, will not the steamship companies combine?" That is possible, but the answer to that is that if you do not have this threat of the railroad competition continually going down to the out-of-pocket cost, these steamships will fight the matter out among themselves.

It has been my opinion from 30 years' experience with the Interstate Commerce Commission that there is no way of ascertaining the

out-of-pocket cost. If 999 passengers are on a train going from here to New York, and another passenger wants to step on, what will be the additional cost for carrying that extra passenger to New York on the train? Nobody has yet conceived a way of answering that question, and therefore when it comes to the question of moving a box of shoes from New York to Savannah and you fix a rate that the railroad can make less than the intermediate rate, less than a reasonable rate, as to what is the out-of-pocket cost of moving that box of shoes, I say it is impossible to calculate. It is unanswerable that if you turn this business over to the railroads, you will to that extent decrease your merchant marine.

Now, the extent that there are violations of the fourth section may be of some interest to the committee. While there are a vast number of points to which there are lower rates to long distance than to short distance, and particularly in railroad competition, it has always been a debatable question and one that we were unable to get any figures upon as to how much of the business of the country really moves in violation of the fourth section. In my judgment—and I can not give any exact data about it, because it can only be ascertained through the records of the railroads at great expense and trouble; I have never thought of it as being as great as it is sometimes said to be. I am led to that conclusion by the several rules of the commission under the fourth section.

In the first place, they provide that when a carrier applies to the Interstate Commerce Commission for relief from the fourth section they must show, first, that they are more than 115 per cent longer than the short line—I am now speaking of the rail competition—except in extraordinary cases, and the commission will not allow a violation of the fourth section when the long line is less than 115 per cent of the short line. Now, I heard Mr. Wilson on the stand here the other day refer to competition between Chicago and Kansas City and telling a very pitiful tale of the situation, if the fourth section were made rigid, as to what would happen there. I think he mentioned that there were six main lines between Chicago and Kansas City; and he stated that the shortest line was the Santa Fe, 450 miles, and the longest line the Great Western, 530 miles. That is a difference of 80 miles, practically, on a haul of 500 miles. Fifteen per cent of 500 miles is 75 miles. Therefore it is very doubtful whether the record will show any violation of the fourth section on any of those lines between Chicago and Kansas City. Therefore you can see that between Chicago and Kansas City—and I think that is illustrative of other points through the country—that the vast mass of the tonnage is carried without any violation of the fourth section. It is only on lines that are 115 per cent longer that the rule of the commission is violated, except in extraordinary cases. Taking that into consideration, and knowing the railroad geography of the country as I do in a general way, I think that the total tonnage moved in violation of the fourth section is not as great as some may assume it to be.

Now, on the lake business, I think it is generally recognized that the railroads and the steamship companies have gotten together in the last 30 or 40 or 50 years, and practically have no real competition.

I believe that is true also in the trunk-line territory, where 50 per cent of the tonnage of the United States moves, that there are no violations of the fourth section based on water competition. I think that statement is correct. I have often heard it made and understand it to be so.

The CHAIRMAN. What is that last statement?

Mr. LYON. That in the trunk-line territory there are no violations of the fourth section.

Mr. SHAUGHNESSY. Where is the trunk-line territory?

Mr. LYON. North of the Potomac and Ohio, and east of the Mississippi.

The CHAIRMAN. What is called the official-classification territory?

Mr. LYON. Official-classification territory. That is the better term. There is no violation of the fourth section based on water competition.

The CHAIRMAN. In that section?

Mr. LYON. In that territory, and that moves 50 per cent of the tonnage. That has been the understanding. I think that is due to the fact or the reason that there is no violation there is that there has been this combination which I have just referred to, the combination between the water lines and the rail lines, so there is no real attempt on the part of the water lines to carry this business between these ports, except as connections of the railroads.

The report to Congress by the Senator—I can not recall his name—the Senator from Ohio, preceding, I think, Senator Pomerene, made a very exhaustive report on the waterways.

The CHAIRMAN. Senator Burton?

Mr. LYON. Senator Burton, I think it was, made a very exhaustive report, showing the ownership of docks and rights of way up to the railroad, and the domination of all those factors by the railroads as accounting to a large extent for the absence of water competition.

Now, just a few figures in relation to this transcontinental situation. You probably have heard the statement of a case where starch had been taken from Cedar Rapids, Iowa, to the Atlantic seaboard, and then taken by water through the Panama Canal to Los Angeles, the freight being delivered at San Diego, some 160 miles or so south of Los Angeles.

Mr. BARTINE. Pardon me. It was not through the Panama Canal. It was long before the Panama Canal was constructed. It was across the Tehuantepec.

Mr. LYON. It might have been across the Tehuantepec. It is an interesting fact which ought to be brought out before the committee. Think what that involved. That involved a 1,500-mile haul by rail from Cedar Rapids to New York. That freight had to be loaded in Cedar Rapids; it had to be unloaded at Jersey City, put upon a barge and taken across to the American-Hawaiian Docks, which are on the Brooklyn side; there unloaded on the dock, then from the dock into the vessel; then taken by the vessel about 3,000 miles to the port on the Gulf of Mexico; there unloaded—

Mr. ESCH. It is not that far. It is only 2,000 miles down to Colon.

Mr. LYON. The distance from New York to San Francisco via the canal is 5,262 miles. It is 2,000 miles, or something of that kind—probably 4,000 miles of water by the Tehuantepec rather than by the

canal. Then it was unloaded upon the dock and put upon a railroad car and hauled across the Tehauntepec Peninsula, unloaded at the port of sailing on the Mexican coast, loaded into the ship, then taken by the ship up to San Diego, there unloaded at San Diego, put upon the dock, and the cars backed in there, loaded upon the cars, and taken up to Los Angeles for final delivery. The railroads could not meet that competition. It is probably 1,500 to 2,000 miles to Los Angeles by rail, when to accomplish the work the other way it would have taken 1,500 miles of rail haul in the United States. 192 rail miles, I think, across the Tehauntepec, and a rail haul of 160 miles in California, and unloading and loading this freight six or eight times, and the railroads could not meet that competition except by a violation of the fourth section.

The CHAIRMAN. What is the rail haul from San Francisco?

Mr. LYON. One hundred and sixty miles; and the freight on that starch was substantially the same as though it had been loaded in a car with one loading, hauled across the continent to Los Angeles, and unloaded, without any intermediate transfers whatsoever.

Mr. SANDERS. In other words, the rail haul was the same both ways?

Mr. LYON. With an addition of 4,000 miles of water; yes. And what is more important, my experience with the commission has taught me, together with my experience with railroad traffic managers and transportation men, that the greatest expense of transportation is not the road haul but it is the handling service—it is the loading and unloading. I think this must have required at least four loadings and four unloadings. That is the extreme case which everybody has mentioned. I think that is the farthest distance that anything was ever drawn into one of these water lines, but that is the one that is always used as the horrible example.

To show how the water lines have to get this business, it is interesting to state to the committee that, via the Pennsylvania Railroad, the American-Hawaiian and Luckenbach Steamship Cos., in order to move steel from Pittsburgh by way of New York to San Francisco, had to pay the full local on steel from Pittsburgh to New York—I think of 16.8 cents; it has been a long time since I looked at the figures, but I think it was that. Yet, when the Pennsylvania Railroad wanted to join with the other railroads west of Chicago, it shrunk its local rate from Pittsburgh to Chicago, I think, down to about 9.2 cents. The boat-line company had that to contend again. I do not know whether that is right or wrong, but I am giving the illustration of what your merchant marine is up against in this proposition.

Of course, we understand the selfish interest of the railroads. They do not want this traffic to move from the coast cities by water. We generally speak of that distance as being 500 miles from Pittsburgh to either New York or Chicago.

Possibly I emphasized sufficiently yesterday that I think that the privilege of the transcontinental railroads to violate the fourth section, upon application to the commission, is far more valuable to the transcontinental railroads than the right to operate boats through the canal would be. In order to compete with the American-Hawaiian Steamship Co. and the Luckenbach Steamship Co., they would have

to make an investment of \$20,000,000 or \$30,000,000, if they wanted to operate boats through the canal, whereas to compete with them under the fourth section they would have to make no investment whatsoever.

The CHAIRMAN. You dwelt on that yesterday.

Mr. LYON. I think the action of the commission has practically set at naught what I read to be the intention of Congress in permitting the ownership of boats through the canal. The canal act was passed subsequent to the amendment to the law in 1910. It was a deliberate act of Congress after the act of 1910 had been passed, when the special-case principle was incorporated in the law.

I want to draw the very broad distinction here between a violation of the fourth section growing out of railroad competition and a violation growing out of water competition. I think the two questions might be approached by Congress from entirely different viewpoints. Since the Government now operates all the railroads, and is substantially the owner of every mile of railroad, certainly the lessee, this Congress might very well say that the Director General of the railroads should not be prohibited from moving freight by any rail transportation which may be open at the moment, in order to get traffic through. I think a strict enforcement of the fourth section, under this condition might limit that power, and I say Congress has got to decide whether that is a wise thing or unwise thing to do.

Then, when it comes to water competition, it has the other question, and which to me is entirely different, as to whether Mr. McAdoo, or whoever is in charge of these railroads, shall be allowed to move freight by rail between A and B through a violation of the fourth section by charging less than to the intermediate points. If you decide he may do that, then I say you would decide that you want to limit your ships. That is the question Congress has before it in this legislation.

The commission still at this date is of opinion that there is water competition that justifies railroads in violating the fourth section, as evidenced by a report which was laid on my desk day before yesterday, dated February 11, 1918. This report allows railroads to violate the fourth section between New Orleans and Mobile, Ala., granting Mobile a 12-cent carload rate on sugar with a 15-cent rate to Warren Switch, Ala., and other intermediate points. I call attention to the fact that even with the great demand for ships at this time, the commission still holds that the railroads may violate the fourth section on such traffic as that. It is only illustrative of others.

Mr. SANDERS. Mr. Chairman, I would ask that the document be printed as a part of Mr. Lyon's hearings. We wish to get all the information possible.

The CHAIRMAN. I do not know how long it is.

Mr. LYON. It covers six or eight pages, I think.

Mr. SANDERS. Or a part of it.

Mr. LYON. I gathered that from the exhibit which is attached at the end of it. This was an application known as the Southeastern Sugar cases, submitted December 5, 1917, decided February 11, 1918, headed, "General readjustment of commodity rates on sugar from New Orleans, La., and from the North and South Atlantic ports to points in the southeast found justified."

The CHAIRMAN. Let it go in. It is a recent hearing. Let it go in in full.

(The report referred to is as follows:)

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 11th day of February, A. D. 1918.

The Southeastern Sugar Cases.¹

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaints in these proceedings be, and they are hereby, dismissed.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY.

Secretary.

Mr. LYON. Mr. Mann yesterday, I believe, or the day before, stated that the coast is interested in this question because it enables the railroads to secure some revenue which would otherwise go to the ships, and by receipt of that revenue it thereby had a tendency to keep down local rates of San Francisco and local rates of other ports. It seems to me that that is a novel position to take for making special cases under the fourth section, that because the railroads will get some money which would otherwise go to the ships, that that would help California in getting local rates outbound from San Francisco. I suppose he worked out that theory because the railroads had repudiated his assistance in these fourth-section cases, and he had to work out some excuse for being here from the Pacific seaboard, but, as I said before, this is a question of a struggle between the transportation interests for traffic, and as both the railroads and myself view it, as I read the statements of Mr. Spence and Mr. Winchell before the Senate committee, it is only a struggle between transportation interests in which the coast cities, who receive these lower rates by an exception to the fourth section, have no interest or any legal right. It is something for which they can not ask. It is a matter that may be conferred upon them by the commission, on the application of the railroads, but something they can have no legal status in, and their appearance here, as we have always claimed and as the intermountain country has always claimed, is not for any purpose except to keep unto themselves those things granted by the railroads that the shipping lines are unable to confer upon them. If it were not that they were getting something that the ships could not confer upon them,

¹ No. 8117, Atlanta Freight Bureau v. Atlanta & West Point Railroad Company et al.; No. 8228, Freight Bureau, Chamber of Commerce, Macon, Ga., v. Clyde Steamship Company et al.; and No. 8255, New Orleans Joint Traffic Bureau v. Alabama & Mississippi Railroad Company et al.

they would have no interest in keeping up the violations to the fourth section.

I will say that the Panama Canal report shows that in 1915, while there were \$220,000 in revenues in excess of expenses, in 1916 the expenses exceeded the revenues by a little over \$2,000,000.

Mr. Esch. That is partly due to the slide in 1916?

Mr. LYON. Yes; from September until April they were blocked by the slide, and the war had something to do with it. That, of course, includes no interest upon the \$500,000,000 invested. That is merely operating expenses and the revenues. I only refer to that to show that so far as this action of the commission in permitting violations of the fourth section decreases that movement of traffic through the canal, it only adds to that deficit, and the money must be appropriated from the Treasury, from the taxpayers generally, to meet that situation.

I had one or two matters that I would like to refer to in answer to questions which Mr. Hamilton asked yesterday.

The CHAIRMAN. Mr. Lyon, if you so desire, you may extend your remarks and add anything to your statement before it is printed. That is, you can have typewritten sheets made out, containing anything you want to say in explanation of what you have said, or anything in addition bearing on the same subject, which will be printed with your hearings when they are printed.

Mr. LYON. If the committee please, then, I would like to submit this oral argument which I made before the Interstate Commerce Commission in these transcontinental cases.

The CHAIRMAN. Is that an argument upon this same subject?

Mr. LYON. Yes, sir.

The CHAIRMAN. There has been general permission given to each witness who has appeared before the Senate committee to add to his hearing here the statement that he made before the Senate committee as a part of his statement here.

Mr. LYON. I think my statement here covers it as fully as the statement before the Senate committee. I have here, however, an argument that I made before the Interstate Commerce Commission in the transcontinental cases, which I would like to have printed as a part of my remarks.

The CHAIRMAN. Let it be printed.

(The matter referred to is as follows:)

BEFORE THE INTERSTATE COMMERCE COMMISSION—"THE TRANSCONTINENTAL CASES."

[Fourth-section applications Nos. 205, et al. Washington, D. C., April 5, 1917. Argument of Frank Lyon for the American-Hawaiian and Luckenbach Steamship Cos.]

The interests which I represent and for which I speak are the American-Hawaiian and Luckenbach Steamship Cos.

As to the tentative report, those companies have no interest in its findings, except that which relates to the main proposition of potential competition.

The part of the report which I shall suggest be eliminated from the final report of the commission is that contained on the last page, which reads as follows:

"If the rates to intermediate territory are adjusted in accordance with the bases above outlined when water competition again becomes sufficiently controlling as in the judgment of the carriers to necessitate the reduction of the rates to the coast cities to a lower level than can reasonably be applied at intermediate points, it is our view now that we should, upon application of

the carriers, permit the reduction of rates to coast points to such level as may be shown to be necessary to permit the rail carriers to continue to share in the traffic."

Our objection to that is, as that question is not before the commission it is not now called upon to express an opinion, as conditions may be different at the time of the application.

If the commission please, the interests for which I speak directly on the record are the American-Hawaiian and Luckenbach Steamship Cos., but they are only representative of the real interests for which I must perforce speak in this controversy. These companies have, with others, in the past engaged in the transportation of commodities between the Atlantic and Pacific coasts. Heretofore they have transported a large proportion of the total of this water-borne traffic, probably 90 per cent. However, what is to their interest in this matter is to the interest of the merchant marine of the country as a whole—whatever principles are laid down in this case that will result in injury or benefit to these two companies will be of equal interest or benefit to the merchant marine as a whole. In this case I have a duty to perform for my clients, but I feel in addition to that I have a much more profound duty for the country.

In this crisis of the country it must be with profound regret that any man, that any commission, that any court has in the past pursued such a course of action, unless forced to do so by the inexorable rule of law, as to have in the slightest degree lessened the merchant marine of the country.

With the passage of the resolution through the Congress of the United States to-day either declaring war or recognizing its existence we must assume that at least for months to come this will be a naval war, and that the country is and will be suffering not only from a lack of ships in which to transport the troops, the supplies, and the munitions necessary for the proper conduct of intensive war, but for the need of vessels of every type to protect our commerce from the aggressions of the enemy.

As Mr. Wetrick, of Washington, has said, this is no time to deal in mere technicalities, but that it is a time when the spirit and not the letter, when the substance and not the shadow, should be foremost in the minds of us all.

While I have placed upon me the duty of representing my clients and expressing to this commission my conception of duty to the country, this commission holds within its grasp the great pearl of opportunity. Pride of precedent with pride of opinion must be laid aside just as the Supreme Court recently laid aside its precedents and held to be constitutional a law which no lawyer who had a reputation would for one moment have advised, based upon precedents, would be sustained. However, that great court rose to the emergency and became a great legislative branch of the Government, sustaining the will of the people as expressed by the Congress.

So here, although we have the Alabama Midland case, decided by the Supreme Court a generation ago, although we have numerous decisions of this commission more or less leaning toward the doctrine of recognizing potential competition, although we have an unbroken line of decisions by this commission to the effect that the existence of actual water competition forms a basis for exception to the rigid provision of the fourth section—in the face of all this I submit this is the time when the commission should "stop, look, and listen," should decide whether there is to be continued to be offered for sacrifice upon the altar of the railroads the merchant marine of the country.

I admit that the challenge to set aside precedents is a bold one; I acknowledge that I have arrayed against me the vested interests of the great railroad corporations of the country—but profoundly believing that the policy that has been pursued by those great corporations, approved by this commission and the courts, has placed the country in a serious condition to meet the present crisis, and believing there is nothing in the proviso of the fourth section making it obligatory upon this commission to strike down directly or indirectly the merchant marine, I do not hesitate to throw down the gauntlet.

All that the Imperial German Government may have done in the past two years to the injury of the rights of this country, the railroads have during the past 50 years done to the injury of the merchant marine of the United States, and that warfare has so long gone unchallenged that it has substantially accomplished the purpose which it is feared might be accomplished by the submarine unless this country makes so bold as to throw down the gauntlet of war.

Prior to the Civil War, which was before the time of railroads in its modern sense, this country boasted the greatest merchant marine that had ever existed in all history.

Since the Civil War, coincident with the growth of the great railroad systems of this country, there has been a rapid and continuous decline in the merchant marine as measured by the greatness of the country. From the earliest times of which we have evidence, before the act to regulate commerce became a law in 1887, the railroads, including these transcontinental lines as personified by the Southern Pacific, have pursued an unrelenting warfare upon the merchant marine. Rates were made from coast to coast which applied only to those merchants who would agree to make no shipments by the competitive water line. That shipper who dared to violate this ukase of the Southern Pacific was either charged higher rates than the competitor or his traffic entirely declined. There was no law to restrain the action of the carrier in those days of unlimited competition, except the inadequate remedy under common law.

This condition was succeeded by the act of 1887, wherein Congress tried to express its views and to impress upon those who had in their hands the execution of the law, that the interior should not be charged higher rates than the terminal. Advocates of departures from the fourth section generally give little credit to the understanding of Congress and through their arguments would have us believe that Congress meant nothing by the fourth section. This is exemplified by the course of the carriers and the courts after the passage of the act of 1887, wherein it was provided that no greater charge should be made to the interior than to the terminal "under substantially similar circumstances and conditions." The railroads in effect pursued a policy that whenever they willed it the "circumstances and conditions" were dissimilar, and there were few cases in which they were not sustained by the commission and by the courts. The fourth section as it stood until 1910 in no way interrupted the aggressions of the railroads upon the merchant marine attempting to serve the coastwise and interior waterways' trade of the country.

After more than 20 years of fruitless effort to restrain violations of the underlying principle of the fourth section, having had before it the course of the railroads, the commission, and the courts, Congress again undertook to give force and effect to what it unquestionably had in mind in 1887, and to that end wiped out the fourth section as it then stood and reenacted it in the form which definitely, positively, and unqualifiedly forbade the railroads from charging less for the long distance than the short distance, leaving them no "substantially similar circumstances and conditions" upon which to hang their departures from the will of Congress. After making this positive declaration, Congress provided that in "special cases" the commission may authorize departures.

The railroads since 1910 have pursued before the commission in their applications for relief the same course that they had pursued prior to 1910, and I regret to say that from my understanding of the decisions the commission has been largely persuaded to their way of thinking, and there are as many substantial violations of the fourth section to-day as there were before Congress acted in 1887 and 1910. There have been many inconsequential adjustments in the interior which the railroads were glad to have ironed out through the agency of the commission rather than take upon themselves the responsibility and the resultant criticisms that would come from preferred centers, discriminations which had grown up in the past 30 or 40 years.

But the fundamental and important departures from the fourth section as it concerns the merchant marine of the country have in no wise been curtailed, but in fact have been intensified through the action of this commission, as is exemplified in the Schedule C exceptions. Just as the merchant marine through the development of shipping in other countries has learned of economies in operation and has applied that to our coastwise and inland waterways the rail carriers have come forward and have secured authority to deprive the ships of that advantage. The United States itself, having expended \$400,000,000 in the development of an economical waterway between the coasts and having prior to its building solicited the views of these various steamship companies as to whether they would use that great waterway if built by the Government, and being assured that they would, proceeded to its construction. Yet when those very companies, in pursuance of what they had promised the committees of Congress, attempted to carry into execution those promises, they were met at the very threshold of their efforts with the same tactics that they had been met with via the Horn and via Tehuantepec before the building of the canal. Congress forbade these transcontinental lines from owning and operating boats through this canal, on the theory that if they owned such boats they would compete with the independent water lines and would produce a competition which would be unfair in its character. Congress, by this provision,

having forestalled such depredations upon the business of the independent water lines by the use of another Pacific mail by a transcontinental line, those carriers now come before the commission and ask it to place in their hands the sharp razor in place of the dull one which they have heretofore used. If Congress had not prohibited the ownership of boat lines by railroads operating through the canal, and those companies had thereupon operated such lines in order to maintain effective competition they would have had to operate boats at an expense of millions of dollars between the various Pacific and various Atlantic ports. It was not the ownership of boats by transcontinental lines that was deemed immoral by Congress. It was the use of the boats. What was the "use" prohibited? Competition with the boat lines was prohibited. That was the evil at which Congress aimed. It was conserving the use of the Panama Canal, its tolls, and forestalling a possible competitor of the merchant marine.

How farcical this seems in the face of this application where the railroads are seeking to defeat the intention of Congress through a body created by the Congress and exercising its delegated powers!

However, the astute managers of these railroads saw at once the advantage of securing the aid and consent of this commission to defeat the purpose of Congress and they do this under the contention that the canal constituted a "special case" and that therefore they should be permitted to compete with the independent water line without being put to the expense of investing in boats, but through the simple process of carrying the traffic from coast to coast at "out-of-pocket" costs, a will-o'-the-wisp which no man knows where it begins and where it ends. Not only is it to be the "out-of-pocket" cost which represents that cost measured over at least 3,000 miles of railroad from coast to coast, but under the doctrine as contended for by the railroads and as heretofore allowed by the commission, that "out-of-pocket" cost is to represent only the cost for 1,500 miles or less, to wit, from the Missouri River to the Pacific coast. Their contention is that they may make rates in competition with the water lines down to that point of the "out-of-pocket" cost from the Missouri River to the coast, while the water line in competition must pay all costs of moving the freight from San Francisco to New York, a distance by rail of over 3,000 miles and by water 6,000 or 8,000. In other words, the water lines, in order to secure any business, must compete with the rail lines not where those rail lines reach the people that the water lines serve, but where the rail line reaches any shipper in any part of the United States desiring to ship the same or a like commodity.

This is what the water carriers must meet in times of actual competition. In order to have a merchant marine engaging in the coastwise trade, this is the burden placed upon them, this is what they have to consider before the inception of the service. If it was the deliberate purpose of Congress to limit or prohibit the building up of the merchant marine, could a more effective course be pursued? Stated again: If a boat line in connection with a shipper at New York desired to participate in the movement of freight from that port to a customer at San Francisco, and there was at the Missouri River a producer of a like commodity as was produced by the shipper at New York, and assuming at the same cost of production, then the boat line must realize that its rate, including all its costs from New York to San Francisco, can be no higher than the "out-of-pocket" cost of the railroad from the Missouri River to San Francisco, and this "out-of-pocket" cost is to be determined, in the first instance, by the railroads with practically no way for the commission to check the figures which they submit.

Instead of the railroads of this country supplementing our great free waterways they have become substitutes. Coincident with the development of the railroads has ceased the building of canals and the improvement of our interior waterways. Fortunately the ocean could not be closed, and it is in the coastwise trade alone that we have seen any improvement, and the large proportion of that consists of ships either owned or controlled by the railroads in serving their interests. This condition of affairs had become so pronounced in recent years that Congress has had to pass a statute prohibiting the ownership of boats by railroads that might compete with the railroads, and this commission for a number of years has been engaged in unscrambling these eggs. As to the Panama Canal, the law is rigid. No railroad may operate a boat through that canal. There is no proviso attached there to which gives this commission authority to grant departure therefrom in "special cases." As to boats operating between other points, there is a proviso under which this commission may allow

the continuance of their operation. That proviso is that the boat line does not compete for business with the rail line.

At this crisis in the country's affairs, if the railroads and the commission and the commission and the courts had given such a construction to the fourth section under the act of 1887, as supplemented by that of 1910, as would have complied with the possible intent of Congress, that its purpose in providing that the railroad should not make a higher charge at the interior than at the terminal points was to encourage the development of the merchant marine in the coast-wise trade and to encourage transportation over our inland waterways we would not now be at such a disadvantage. Mr. Wood, speaking for the Southern Pacific, states that it is probable that all that company's ships will be commandeered by the Government for war purposes and that there are very few ships to be taken. For this condition we have to thank the railroads in their mad desire to transport all the traffic of the country at rates below what the merchant marine could profitably carry it for.

The sea with all its dangers and possibilities has fascinated man from the beginning of history, and notwithstanding the handicap placed upon the merchant marine as above outlined, bold spirits have struggled to meet the conditions of the game no matter how arduous, and in sporadic cases the transcontinental competition has been met from time to time, either assisted by ocean traffic from the Hawaiian Islands, which could not be strangled by the "out-of-pocket" doctrine of the railroads, or by the advantages of the Panama route, which they are here attempting to offset.

However, this application as made goes far beyond that of actual competition. The railroads here claim that they have a right not only to meet actual conditions but that the existence of water, that the bare fact that the ocean washes the shores of the Atlantic and Pacific constitutes a "special case," which warrants this commission in designating it as such in order that they may forestall the entry or reentry of a boat line into the transcontinental business.

Although they set forth those cases which have been heretofore referred to wherein actual competition was held to be a "special case" even through the Panama Canal, they now contend that because of the "slow and deliberate" process of this commission in the determination of their applications, that the law must be swept aside, strained to the breaking point in order that the railroads may forestall the entry of water lines into the transcontinental business. Their application stands upon the alleged "slow and deliberate process" of this commission. The carriers have not the hardihood to place their plea upon the same ground as do the Pacific coast interests—the weak plea of sympathy—but they base their claim for consideration upon the allegation that, as it consumes time to determine these questions, the commission should forestall itself, should prejudice the competition and grant them the privilege of foregoing reasonable rates at the coast for fear that the steamship lines would have the hardihood to enter the competition, and that before the commission can hear the application of the railroad and issue its order in effect depriving the boat lines of their business those boat lines will secure some portion of the traffic. The crime in their eyes is that the boat lines should secure any of the business. There is no good reason why the railroads should not secure it all if they are entitled to secure part of it at less than reasonable rates—

The CHAIRMAN. Mr. Lyon, at least the railroads are continuing to serve the public between the Atlantic and the Pacific coasts, and your clients are not. Do you think that makes any difference in this respect?

Mr. LYON. No, sir.

The CHAIRMAN. You do not?

Mr. LYON. No, sir. My clients are exercising their legal rights.

The CHAIRMAN. Oh, I understand that.

Mr. LYON. And the railroads are performing their legal duties. I think we stand here upon an equality.

There is no good reason why the railroads should not secure it all if they are entitled to secure part of it at less than reasonable rates, and there is no answer to the logic of their position that if the commission grants them any relief it shall grant them all the relief so long as in the making of the rate they do not go below the out-of-pocket cost from the Missouri River, or even points west thereof, to the Pacific coast on westbound business.

However, if the commission would be "expeditious" as defined by the interested railroads in its action upon these applications, these carriers would

have no grounds upon which to stand in their appeal to meet potential competition, because if the commission were expeditious in that sense the railroads would receive the maximum of reasonable rates up to the time that they felt the competition of the water lines and would immediately receive relief in the case they applied for the same, and this is all the most selfish could ask for.

In other words, they say that the commission does not act promptly on these matters, that it takes time to consider these cases, and that pending that decision the boat lines may reenter and take some of the business. Now, if the commission will give an expeditious decision, the grounds upon which the railroads present their applications will fall, because up to that time they would receive reasonable rates on the coast business, and the boat lines would take none of the business from them to which they are entitled.

Their only fear, as set forth by Mr. Spence in his address, is that the carriers might lose some business in the interim—between application and decision.

Mr. Spence, in his statement before the commission, said:

"The time of renewal of service (water service) is entirely all their own choosing. If potentiality of competition is to be recognized as it has been, it must be on the theory that rates during the period of potential competition should be so adjusted as to enable the rail lines to compete with the water lines when the potential competition has become actual, without being compelled by force of law to forego traffic until, through formal proceedings before the commission, the necessary authority to meet the rates of the ocean lines can be obtained. This necessarily is a slow and deliberate process."

Now, in regard to the suggestion of the chairman, I want to say, on behalf of my clients, because the intimation may be that they are not performing their public duty, that these two companies are performing as great a public duty to this country as are the railroads. The fact that they are not operating their lines between the Atlantic and Pacific coasts, where there are competitive railroads to perform the service at reasonable rates, but instead are serving in other parts of the world, is no reflection upon the service. It is a crime. I submit, in this day for any boat line to move a ton of freight from any point where it may be moved by a railroad. With the shipping of the world being destroyed at the rate of half a million tons a month, to say that those steamship companies should go to these places where the railroads have terminals and take the business from them, and thus be forced to forego the transportation of other business which can be handled only by the water lines, would not be right, and I submit that the position may not well be taken that they are not now performing a great public service.

It is the very blunt plan of the Southern Pacific to have the Interstate Commerce Commission constitute itself a committee of one to do those things which the Southern Pacific has done during the past 40 years between the Pacific and Atlantic coasts. It wishes the commission to set aside the law and proclaim that Congress meant nothing by the amendment of 1910 except that the Interstate Commerce Commission should take the initiative instead of the railroad. Its contention to meet potential competition is no different in any respect from its meeting of potential competition when it had the power.

The United States is to employ its own ships in carrying on the business between the Atlantic and Pacific which has been abandoned by those who own ships, and thereby make water rates so low as to force down reasonable railroad rates.

That is the proposition which was read here from Mr. Brent, that the United States Government, after having spent \$400,000,000 on the canal, is to spend some more millions in buying boats in order to operate through that canal and in order to reduce rates to such a basis that these railroads may not collect reasonable rates.

In other words, it is to invest \$400,000,000 in the canal, and then subsidize ships in order to force the railroads to collect less than reasonable rates, and then grant a 15 per cent increase to the rates to make up the deficit thereby created.

The gross freight revenue of these carriers last year was about \$400,000,000. Fifteen per cent of that would be \$60,000,000. There is an opportunity for them to collect at least five or ten or fifteen million dollars through establishing reasonable rates from coast to coast, and yet they are here in opposition to it.

I thank the commission.

NOTE.—What was said in the above argument had to do entirely with exceptions to the fourth section at terminal points where there was water competition. As is well known, the commission's early interpretation of the meaning of the fourth section applied to the competition of rail carriers, was overruled by the courts. The commission then

held that such competition did not warrant a departure from the rigid provisions of the fourth section. The courts ruled otherwise and the commission had to conform thereto. However, as to water competition the commission has always held that the fact of its existence at a terminal established "dissimilar circumstances and conditions" and justified or excused a departure from the rigid provision of the fourth section and under the amendment of 1910 constitutes a special case. It was as to this construction that reference was made in the argument. The commission has rendered a great service to the country in ironing out many of the preferential rates granted by carriers to so-called trade centers and other preferred cities in the interior, handicapped as it has been by the law as construed by the courts.

Mr. LYON. The only other question was the one which Mr. Hamilton raised yesterday, and I had some figures—I do not know whether the committee would care to have them in this hearing—but he asked questions a little outside of the subject here, but it would only take a moment. I will state what it was. You remember Mr. Hamilton asked about the advisability of the commission having authority to make rates to meet market competition, and I said that I thought one of the troubles with the transportation question of the country to-day was that that very doctrine being carried to its inevitable result, had been the tying up of a large number of cars and locomotives in useless transportation throughout the country.

I represented the Hudson Cement Mills in the Hudson district, which is on the Hudson River just above New York—about 90 miles above New York. In that case I appeared asking for a reduction of the differential as between the Hudson district and the Lehigh district. The Lehigh district is 450 miles away from the consumers on the Boston & Maine Railroad. We were within 200 miles of those consumers. The railroads charge but 40 cents additional from Lehigh up to Hudson, on the way to the Boston & Maine deliveries. Thirty-nine per cent of the cement moved from the Hudson district to the Boston & Maine people, and 61 per cent from the Lehigh district, 250 miles farther away, and we figured out the tons of cement the railroad had moved—this is a concrete illustration. Now, the cement is substantially the same. There is no difference in the quality. There is an unlimited supply. All you have to do is to dig down the mountain and break it up. Yet, with the Lehigh people competing with the Hudson River district in the sale of cement to the Boston & Maine consumers on the "value of the service to the shipper" theory, it required the railroads to operate each way in 1916 between the Lehigh and Hudson districts an extra train of 25 cars loaded with 30 tons of cement an extra distance of 250 miles than it would have been had the cement moved from the Hudson district. I mention that as it seems to me to be one of the big questions before the country. I do not think it is just this fourth section question. I know the traffic director is now trying to eliminate those useless hauls in the interest of the consumers of the country. The consumer never appears before the Interstate Commerce Commission. I generally represent the shipper, who is trying to get what he can out of the consumer, and my railroad friends represent the railroads, who are trying to get all they can out of the consumer; and the consumer, except in so far as he is indirectly represented by the commission, has never an opportunity to get his interests before them.

Mr. SANDERS. The consumer's only function is to pay the freight, is it not?

Mr. LYON. That is all; and we can not get away from the proposition that the ultimate bill paid by the consumer is the cost of moving

the freight, plus a reasonable profit; and if the freight is moved an unnecessary distance in order that the carrier may get the benefit of hauling it to him, it is a unjust burden upon the consumer, as I look at it.

Mr. ESCH. This shipping-zone system for coal contemplated by the fuel director maybe listens good, but works an injustice in many cases. My own city, La Crosse, on the Mississippi, is an instance. They want to put us into a zone and require us to get our coal from the Lake ports. We have been getting it for 30 years from Illinois, and if we have to get it from the Lake ports it will cost \$3 per ton more and the burden upon the manufacturers of our city will be \$450,000 more than if we were allowed to get it where we have been getting it for 30 years. We have been using Illinois coal, and we have adjusted our furnaces to that and have used self-feeders necessary for it, and now they tell us, under the zone system, that we must get our coal from West Virginia and Pennsylvania. We have got to change our furnaces and pay \$3 more a ton, which will be a burden of a half a million dollars, or something like that, upon the manufacturers of our city.

Mr. LYON. The method adopted by the Director General is the result of a bad method of rate making that has been allowed to grow up.

Mr. ESCH. Our coal is loaded at the mines and shipped direct to the point of delivery without breaking bulk. Now, they tell us to get it from the Lake ports.

Mr. LYON. It is going to produce a great dissatisfaction; there is no doubt about that.

Mr. SANDERS. The only pardon that I ask of the committee in asking any questions at all is that this water transportation, to my mind, is the biggest thing before the people; and this is the first time, to my knowledge, that there has been any question of this kind brought before Congress, so I want to get at it right, and I want to ask some questions in regard to it.

The CHAIRMAN. Go ahead, Governor.

Mr. SANDERS. I want to know your viewpoint on this, Mr. Lyon. You are firmly of the opinion that the railroads ought not to be permitted, through the law as it at present stands, to make what is called water competitive rates, the effect of which being either to put out of existence existing lines of water transportation or to discourage new lines? Is that your idea?

Mr. LYON. Yes, sir.

Mr. SANDERS. Now, on the other hand, are you of the opinion that water transportation ought to be permitted to put railroad transportation out of business?

Mr. LYON. My opinion is this, that the railroads should not be allowed to violate the fourth section in order to meet water competition. Then I think it should be the survival of the fittest.

Mr. SANDERS. Now, reduced to the point of the logical conclusion, does not your entire argument mean this, that wherever water is the logical thing to use in the transportation of freight, that it will drive out the rail, and that wherever rail is the logical method of moving freight, it will drive out the water?

Mr. LYON. I think that is true.

Mr. SANDERS. Is that true?

Mr. LYON. Yes.

Mr. SANDERS. Therefore, if I understand you thoroughly, you regard water and rail transportation as both necessary for the well-being of the public at large?

Mr. LYON. It would seem to me to be so. That is a question you gentlemen have to decide anyway.

Mr. SANDERS. I am asking your opinion about it.

Mr. LYON. Personally, that is my opinion; yes.

Mr. SANDERS. Then your personal opinion is that both rail and water transportation are necessary for the well-being of the public, and that, following that, legislation ought to be enacted, if it is not sufficiently strong and sufficiently explicit in the present statute, to provide that artificial service can not drive water off of a logical water route?

Mr. LYON. Well, I would put it the way I have in this bill which I have drawn. I would not allow the railroads to make rates less for the long distance than for the short distance in order to meet water competition, but if they complied with the fourth-section rule, then I would not say that the Yazoo & Mississippi Valley Railroad, along the Mississippi River, should not compete with a boat line running up and down the Mississippi. I would not be in favor of any legislation that favored the boat line on the Mississippi River, but I would not allow the Yazoo & Mississippi Railroad to charge a lower rate to Vicksburg than to intermediate points. The railroads are not subject to any law except the will of the commission, and the commission changes from time to time, and changes its decisions from time to time. In this very opinion in the transcontinental cases one of the most distinguished commissioners—Commissioner Harlan—dissented. The boat lines do not know when a majority is going to think the other way.

Mr. SANDERS. I want to know your viewpoint, because I have some opinion of my own on what is called this out-of-pocket cost, for certain terminals. It is my view, and I am going to ask you whether you coincide with it, it is my view that whenever a rate is put into a terminal at the out-of-pocket cost, that then, in that case, some one also, some other consumer located somewhere else, pays the interest and the dividend on that railroad.

Mr. LYON. Now, I guess that is a fact, but he might do it anyway, whether the railroad puts that in there or not. I do not mean that because the railroad meets water competition, that that is any burden upon the intermediate territory. I do not go that far. I say it is not a burden upon the intermediate territory, if the railroad only meets the rate.

Mr. SANDERS. That is exactly where you and I seem to counter. My position is this, and I want to get your thought on it clearly. My position is this, that if the railroads take freight, we will say from New York to San Francisco, at a loss, then, of necessity, in order to make dividends, it must charge the intermediate points a higher rate than what those intermediate points ought to pay?

Mr. LYON. Yes, if your premise is right, if they take it at a loss. You have got to define the word "loss."

Mr. SANDERS. I think it is easy enough to define that word loss. I disagree with the gentleman from Chicago who stated the other day that the last 100 miles of a railroad haul amounted to nothing,

because I can not conceive how the use of a car, how the use of a locomotive, and the payment of the crew amount to nothing in the last 100-mile haul with a railroad. I can not conceive of that.

Mr. LYON. I do not agree with that part of it, but I am talking about this proposition. If the tariff between New York and San Francisco was \$2 on a commodity, which is a reasonable rate, I say it does not necessarily follow that if the railroad reduces the rate on a commodity which is hauled by water to \$1.50, if the railroad reduces the rate to \$1.25, for which it would otherwise charge \$2, I do not mean to say there would be a loss by the railroad, that they are not getting a new dollar back for an old one, you understand. That is what I mean to say by out-of-pocket cost.

Mr. SANDERS. Let us get that out-of-pocket cost question. No railroad could continue to exist by merely swapping dollars?

Mr. LYON. I hardly think so; at least it would not be a very beneficial life. They must have got to have something above that to live on.

Mr. SANDERS. If a railroad's business is cost, plus, or out-of-pocket, plus, it amounts to the same thing. At one point, then, is it not obliged, in the very nature of things, to charge the intermediate points a higher tariff than it otherwise would charge, to make up what it calls the out-of-pocket cost at some other point?

Mr. LYON. I do not agree with you on that, and I can give you my reasons for it.

Mr. SANDERS. I would like to find a reason for it.

Mr. LYON. I have stated before that if the American-Hawaiian Steamship Co. takes a commodity from New York to San Francisco for \$1, and a reasonable rate upon that commodity by rail would be \$2, if the railroad can get that commodity, at a rate of \$1.25, which is 75 cents less than a reasonable rate, it has to decide, under this fourth section application, whether it can afford to do that business for \$1.25. You can not assume that the railroad has lost anything by it, that it has not gotten a new dollar for an old one expended in moving that particular commodity in that particular time. If it has not lost anything, I can not see that it would be a burden upon anyone. That is the way I look at it.

Mr. SANDERS. I mean in the final analysis it reaches this conclusion of what is the out-of-pocket cost?

Mr. LYON. Yes.

Mr. SANDERS. Now, who gets up those figures?

Mr. LYON. Nobody. The Southern Pacific made up some on one application.

Mr. SANDERS. Now, what I am driving at is this: By what process does the commission, or you or I, how can we arrive at whether that out-of-pocket cost to the railroad is legitimately figured, or whether it is merely figured to put water competition out of business?

Mr. LYON. I say I do not know any way of actually figuring it, and I do not know of anybody who has figured it. In the Southern Pacific case they put in a cost of \$4.88 to move stuff from San Francisco to Galveston, in cars loaded 80,000 pounds to the car. You can approach the out-of-pocket cost on carloads because you have certain factors which are ascertainable. You have car repairs; you can approximate the amount of fuel that is used; you can approximate the wages of the crew. It is very rough, but you can approximate it. I am

probably known as the cost man of the Interstate Commerce Commission, because I attempted to figure the cost of moving a train loaded with coal from West Virginia to the Lake Erie ports when I was with the Interstate Commerce Commission. I believe that in that investigation we came as near getting the cost as has ever been done; and I told Commissioner Lane, when he referred the matter to me, I said, "Mr. Lane, this is the best opportunity I have ever known to approximate the cost of moving one commodity as against other commodities, because coal moves in train-load lots, and you can take the engineer's wages and set them aside; you can take the fireman's wages; you can take the cost of repairs per engine mile and the cost of repairs per car mile. But that was in solid trainload lots. But when you come to talk about the out-of-pocket cost on fourth-class goods, there is no such thing.

Mr. ESCH. In the ultimate cost of the trainload shipments of coal, did you figure the wear and tear on the track?

Mr. LYON. No. We took the 118 items of expenses in the commission's accounts and we set aside the actual car repairs, the engine repairs, and then we ascertained what percentage that was of the whole.

Mr. SANDERS. I am not making myself clear to you; but the thought is absolutely clear in my mind, which is this, that as long as we permit—as long as the legislative branch of the Government permits the executive branch in rate making, which is the Interstate Commerce Commission—to let the railroads, upon application, make rates as against either actual or potential water competition, we merely put a weapon in the hands of the railroads through and by which they prohibit water transportation in this country.

Mr. LYON. That is what it is for; not to prohibit it, but to limit it. I will use the expression "limit it." That is what the application by the railroad is for—to limit the water transportation. They have no other intention or purpose.

Mr. SANDERS. That is a thought that you and I thoroughly agree on?

Mr. LYON. Yes.

Mr. SANDERS. Then my other thought is this, that it looks to me like it is the duty of the legislative branch of the Government to so amend the law as to take that discretion away from the commission, in order that a merchant marine may be established and maintained in America.

Mr. LYON. I appear here to advocate that very thought, as you have expressed it.

Mr. SANDERS. A merchant marine for domestic purposes. I use the term as distinct and separate from a merchant marine for foreign trade. A merchant marine for domestic purposes, as I see it, are steamship lines using the Atlantic, the Gulf, and the Pacific from port to port, boat lines using the Great Lakes on the north, and boat lines utilizing the rivers of this country. That is a local merchant marine, is it not?

Mr. LYON. Yes; that is the sense in which I have used it.

Mr. SANDERS. So when you used the words merchant marine you were not confining yourself to ocean-going vessels?

Mr. LYON. I did not refer to them at all, because this question can not affect ocean-going vessels at all.

Mr. SANDERS. A coastwise vessel is an ocean-going vessel.

Mr. LYON. I mean in foreign business; it does not include any foreign business.

There is only one thought I want to express in closing, that the contention I make about the commission having the authority delegated to it under this section is this, that I think neither it nor any other body of men is wise enough to exercise the power conferred. Congress should lay down a definite rule. For four or five or six years the intermountain country under these decisions has been paying higher rates than the coast, with practically no water competition, and to-day it is paying the same rates for hauls 500 miles less than to the coast.

I would suggest the committee consider an amendment to the fourth section substantially as follows:

A BILL To amend section four of the act to regulate commerce passed February fourth, eighteen hundred and eighty-seven, and subsequent amendments thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of the act of Congress of February fourth, eighteen hundred and eighty-seven, to regulate commerce, and as subsequently amended, be, and the same is hereby, further amended so as to read as follows: "It shall be unlawful for any common carrier, subject to the provisions of this act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act, but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers and property, except that it shall not grant such authority for the purpose of enabling the carrier by railroad to transport traffic in competition with a water route or routes. Wherever the tariffs of the railroads now provide lower rates for the longer distance than for the shorter for the purpose of enabling them to transport traffic in competition with a water route or routes, said tariffs shall be canceled and new tariffs published within _____ days from the passage of this act, providing no higher rates for the shorter than for the longer distance.

This amendment was prepared by me at the suggestion of Senator Pomerene when I appeared before the Senate Committee on Interstate Commerce, which had under consideration a proposed amendment to the fourth section of the act to regulate commerce.

It has been prepared with the purpose of prohibiting railroads from charging less for the longer than for the shorter distance in order to meet water competition at the more distant point.

If the committee decides it is advisable to favorably report a bill for the protection of the merchant marine in addition to a law forbidding the charging of less for the long distance than the short distance in order to meet water competition, it would be advisable to give consideration to the question of rates being made lower by violations of the fourth section to meet market competition. Market competition is so insidious that almost any end may be accomplished under the guise of meeting it. It is possible to injure shipping when rates are made on the basis of the value of the service to the shipper, which is another way of stating the proposition of making the rates to meet market competition.

STATEMENT OF MR ALLISON MAYFIELD, CHAIRMAN OF THE TEXAS RAILROAD COMMISSION, AUSTIN, TEX.

The CHAIRMAN. Mr. Mayfield, state your name and the position you hold.

Mr. MAYFIELD. My name is Allison Mayfield. I am a member of the Railroad Commission of Texas, Austin, Tex.

Gentlemen, I have but a few words to say. Broadly speaking, my main interest in this matter is in behalf of that gentleman who my predecessor has reminded me and the committee is rarely represented here—the consumer. I am interested in seeing that he gets a reasonable and a just rate. Of course as it compares with the Union we are a small factor. We have about 16,000 miles of railroad in our State. We have a water coast of some 300 miles. About half of the traffic that moves over our railroads is called intrastate traffic, much more than the average that prevails over the country at large. We believe that the local authorities can better take care of the shippers of our State than an authority centralized here in Washington, and for that reason we are greatly interested in the preservation of the power of the States to control their local traffic. In addition to that, as I say, we are interested in a reasonable rate. I have been making freight rates a long time and have participated in the making of a great many tariffs. I do not know what a reasonable freight rate is. I never heard any man define it except in the most general terms.

I think it has been decided—at least I believe it is economically true, whether it is judicially true or not—that a rate voluntarily established by a carrier and maintained for a reasonable length of time upon a given commodity furnishes a maximum standard for a reasonable rate. The carrier would not voluntarily engage in it and maintain it and retain it unless, in his judgment, it afforded him a fair compensation. Now, then, it is fundamentally wrong, in my judgment, for a greater service to be performed for a less charge. Of course, there may be exceptions to that, and rate-making is guided more or less by observing limitations. It is purely an arbitrary act, with limitations to be observed. The volume or density of the traffic must be considered. Really the only two accounts of a railroad or a carrier are the debit and the credit. That must be looked to and kept before you all the time. And then it is a question of limitations. The rate should never be so low that it does not produce out of pocket cost, and no one knows what that is—it is a guess. I think the Erie Railroad's gross earnings are 4 mills a ton a mile. That is my recollection; I do not keep those things in my mind. Another railroad may earn 9 or 10 and not earn operating expenses. The other day two little railroads in my State came to me and said they could not earn operating expenses on my tariffs, two little independent, separate railroads, and I said: "Make any tariff you want, and I will approve it." High rates don't increase tonnage, and that is the most essential factor.

The other limitation is that you must not put rates so high that the commodity will not move. The greatest desideratum in determining whether a railroad is a profitable investment is the density of traffic. Carriers make rates to get traffic. They do not know whether it pays or not. If kept in force a reasonable time, it must be

assumed to pay. There is a constant conflict between the operating officer and the rate-making officer, the traffic man and the operating man. The traffic man will build a spur for a few miles from the main line, if he thinks he can get a few more carloads. The operating man wants to know how many carloads he will get and how long it will last, and they will usually compromise. Sometimes it is built, and sometimes it is not. It is a guess, it is an approximation.

Now, on this bill there are three phases of it, the competition produced by water competition, by rail competition, and by market competition. In so far as it relates to water transportation, I am in favor of this bill. I do not know just what the correct adjustment would be between the rail carrier and the water carrier, but my observation has been that they are like the lion and the lamb when they lie down together. They may have the same rate, but the facility of speed of the rail carrier gives it the advantage. Business considerations enter into it. You can insure it, and your bill of lading may be more valuable; it is merchantable. Various business factors enter into it.

I do not believe in potential water competition at all. That is just a pretext for discriminations and higher rates. By that I mean the carrier will make a rail rate to meet supposed water transportation and keep it from starting, to keep the water transportation from being inaugurated, and then raise rates when it suppresses the supposed competitor. It has been said that the water carrier can go here and there and anywhere. It is not confined to a definite route. I do not quite agree with that, especially as it relates to our inland water transportation and coastwise transportation especially. I have seen water transportation started between the Atlantic and the Gulf ports several times driven out by the railroads. And there are various ways of doing that. I remember the Hogan Line started between New Orleans and Galveston on the Gulf, and the Atlantic Seaboard on the north. A competing line was owned by the Southern Pacific and the Mallory Line; one directly owned and both dominated by the railroads and belonging to the same traffic associations that the railroads did, so that the Mallory and the Morgan made joint line rates with the railroads from and to interior points in Texas, Oklahoma, and probably as far as Colorado, whereas the railroads would not make joint-line rates with the Hogan Line.

Now, the result of that was a rate war, ostensibly, between the two lines, that is the Hogan Line and the Morgan and Mallory Lines, between the Gulf ports and the Atlantic ports, and the rates were cut down to a nominal rate. The railroads shared a part of that loss, by reason of the division, with the Morgan and Mallory Lines. The Hogan Line had no one to share the loss with, and, of course, it had to go out of business. We had a war then, the Spanish War, and the Government took over their ships, or I do not know what would have become of them.

Our coastwise shipping, under our navigation laws, does not operate like a so-called tramp ship on account of our navigation laws, which I am not familiar with, and they can not quit the coastwise service and go all over the world. As a matter of fact, the tramp lines have their courses mapped out long ahead. They do not pick up goods from one port and go to another ad libitum. They are chartered for

a whole season or a year in advance. They know just as well where they are going at the beginning of the season as they do at the close of the season. So I say if a railroad voluntarily puts in a rate to meet water transportation it ought not to be permitted to put in so low a rate as would drive out the water transportation, but should have it imposed as a maximum to all intermediate points, and then if that is extended to all the patrons and affords a better, more efficient, and more economical means of transportation than water, then, as my friend said, I believe in the survival of the fittest, and the water transportation must go; but I do not think there ought to be any permission given by law or by any act of the Interstate Commerce Commission or any other tribunal that would permit those practices; that is, suppress the competition and deny the reduced rates that ought to follow.

Now, as to one railroad competing with another, that is a different question. There can be but one rate between two given points; I do not care how many railroads you have. Traffic will move over the route of least resistance, just like gravity will take water down hill, and the cheapest rate between two points is going to move the freight, and as to track facilities, they would have 40 tracks if the density of the traffic would warrant it.

The CHAIRMAN. The density and permanency?

Mr. MAYFIELD. Oh, yes; certainly.

The CHAIRMAN. Like that railroad they spoke of the other day from Chicago to Kansas City; they could build 20 tracks and the business justify it.

Mr. MAYFIELD. And they would do it, and would be glad to do it.

Now, you can see how there are two sides to that. We have a law in our State that gives a shipper the right to route his shipment, the absolute right to route his shipment, and the courts have sustained that. He can sometimes route it over two lines, although the commodity originates at a point that can reach its destination on a single line. Of course, as I say, there is only one rate that prevails, but if he routes it via two lines that rate has got to be divided between the two lines, and it may be more circuitous, and he may be moved to do that because it is beneficial to him in that he escape switching charges. Maybe his industry is located on the circuitous route, whereas he would have switching charges to pay if he went by the route that was nearest and that made the rate. He would have to pay, in addition to the rate, a switching charge at either terminal or at both, as the case may be. Where that was abused the railroad commission of my State has given the railroad the power to notify the shipper in advance, and then they would charge him the sum of the two locals. Of course, he goes back then to the proper route. But it might be that two lines would want to compete for the business. They are there permanently, and the single line railroad is not going to drive them out of business. They are there for all time, so far as we know, and it is presumed that the facilities of the different routes are equal, as far as the expedition is concerned and liability to move the shipment and to protect the shipment and the shipper; and I am inclined to think that where competition is produced by the railroads that probably it would be a little rigorous to enforce the long and short haul clause.

Now, as to market conditions, I know very little about them. I can imagine where that would be needed. I heard Mr. Barlow's testimony. We have nothing of that sort in my State that I can recall to mind just now. It has opened the doors pretty widely, but primarily and mainly what I am interested in is anything that will keep down rates. Rates have been going up a long time, State and interstate, and the man who has to pay them is not often heard. Maybe he will come to me when his business is going to the bad, but he can not get up here, and here is the highest power of this Nation, right here. You can delegate your power, but you can not abdicate it. Judge Reagan, who spent the best years of his life right here in this committee room, was opposed to the Interstate Commerce Commission and favored this tribunal as the one to regulate interstate commerce; and so, at any rate, we do not feel that we are out of place in appealing to you for anything that helps the people to get as low a rate as we can. Thank you, gentlemen.

The CHAIRMAN. Mr. Mayfield, under the circumstances I will refrain, but I would like to question you, if I had the opportunity, for about two weeks on the whole railroad subject, not all of it by any means pertinent to this particular bill, but I will refrain now. The reason why I say that is the fact that you represent the largest State in area in the United States, and having the largest mileage, and your State fairly illustrates the real conditions as they affect intrastate commerce, in comparison with interstate commerce, and all those things. But I am on another joint committee of the House and Senate, investigating all these questions, and I hope that before that committee goes out of existence we will have the pleasure of having you here before that committee indefinitely, for the benefit that I think you can be to the committee on the subjects under consideration and discussion. At the present time I will not question you, because the subjects I want to ask you about are so much larger and wider than this bill involves.

Mr. MAYFIELD. Whether it is now or at any other time I will be glad to come here and give you the benefit of any information I have. I want you to think, when you are about to strike down the powers of the States to control their transportation.

The CHAIRMAN. I want to say that I will be very glad to have you before the joint committee of the House and Senate. We have to accommodate ourselves, you know, to conditions here, and it may be a little difficult for that committee to meet during the active sessions of the House and Senate, but I hope we will have an opportunity to hear you very fully.

Mr. MAYFIELD. Any time it may suit your pleasure.

The CHAIRMAN. And give you plenty of time, in order that we may ask you concerning many subjects on which I am satisfied you can be of material assistance.

(Whereupon, at 12.05 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m., pursuant to recess.

The CHAIRMAN. I believe you want to make a supplementary statement, Mr. Shaughnessy.

STATEMENT OF MR. JOHN F. SHAUGHNESSY—Resumed.

MR. SHAUGHNESSY. I first wish to take issue with the statement made by Mr. Frank Lyon for the Luckenbach Steamship Co., in response to a question by Gov. Sanders, that the so-called out-of-pocket cost traffic does not act as a burden upon the traffic of all of the interior points, and I want to show that that is fallacious by the official opinion of the Interstate Commerce Commission itself. In its recent opinion, the opinion which has been made effective recently, it held as follows on that point:

It is perfectly clear that the Pacific coast cities have always paid lower transportation rates than they would have paid were it not for the facilities they have enjoyed for bringing manufactured articles from eastern manufacturing districts, and for sending east the products of the coast States by water. It is also clear that the Intermountain section of the country has paid and now pays rates for the transportation of these manufactured articles which are higher proportionately than is paid by the coast cities, and probably higher than it would be necessary to maintain if the rates to the coast cities could be maintained at a level more nearly proportionate to the service given.

That is a complete answer to that statement.

As to the other statements, that out-of-pocket cost rates can not be determined, and that the carriers can not tell what they are, I want to say in challenging this statement that there is absolute confusion and misconception in the use of the term "out-of-pocket cost." What is meant, when properly defined, is the segregated or actual cost. In other words, a fair proportion of all costs assignable, considering load factor per train and per car and the distance hauled. Now then, I contend that transcontinental traffic moving in trainload and carload lots can be established as to its cost just as well as it can in a manufacturing industry or any other industry in which cost data must be carefully allocated in order to segregate and fix the selling prices of different contract work. It can be done, and we have done it on behalf of the Nevada Railroad Commission and put it in evidence before the Interstate Commerce Commission. The Railroad Commission of Wisconsin has done likewise, not perhaps before the Interstate Commerce Commission but before its own body. It has most elaborate cost data, not only as to the moving of traffic in trainload lots, but in carload lots, and even in less than carload lots. Now, I want to say that it is the rule of the railroads themselves to make up this cost data, and they do make it up in the form of a monthly exhibit of operations, and they know within a very close approximation just what it costs them to handle their traffic on a per unit of traffic basis, either per ton mile or per engine mile or per train-mile, or in trainload lots, or in carload lots, or anyway they want to figure it.

During the course of the Intermountain Rate cases I submitted a brief before the Interstate Commerce Commission in which I analyzed the cost of moving trans-State traffic in trainload lots from Ogden, Utah, to San Francisco, and showed that the actual or full cost of operation was 2.74 mills per ton per mile. This figure is probably higher than the actual cross-continent cost from ocean to ocean because the level haul mileage is so much greater that it would substantially reduce the constructive mountain mileage cost that I used in the ratio of 2 to 1 over the Sierra Nevada Mountains, a distance of 158 miles out of 786, the total mileage used in the calcula-

tion. But applying this factor (2.74 mills), the actual cost of operation from New York City to San Francisco, a distance of 3,200 miles, is \$8.17 per ton.

From Pittsburgh to San Francisco, a distance of 2,750 miles, the actual cost of operation is \$7.53 per ton.

From Chicago, a distance of 2,279 miles, the actual cost of operation is \$6.25 per ton.

From Kansas City, or other Missouri River points, an average distance of 1,800 miles, the actual cost is \$4.93 per ton. See my testimony on this question before the Senate committee.

Compared with these costs, the average carload rate authorized on the basis of the commissions' schedule C, order of January 29, 1915, from all of this territory to San Francisco was \$15.63 per ton, carloads, and \$30 per ton, less than carload, whereas to Reno it was \$19.77 per ton, carloads, and \$37.55 per ton, less than carload. Contrast the cost with these average rates authorized by the commission in 1915, and which have since been substantially increased, and it must be apparent how highly profitable the Pacific coast traffic is and how outrageously unjust and unnecessary it is to assess the higher rates at the intermediate shorter haul points. Keep in mind also that these figures as to the cost of handling this traffic are not less than fairly representative when it is remembered that the carriers have classified their business and fixed their rates on purely local business within each State and between neighboring States on a high level in order to compensate for the high cost of these relatively short haul movements. Conversely, therefore, the low cost must apply on this exceedingly long haul transcontinental traffic, which, by the way, is not ordinary interstate traffic. On the contrary, it is "trans-State traffic," moving entirely across many States, as if over a bridge, and as the compensation gathered per mile unit of traffic is exceedingly low and in no way comparable with the intrastate and interstate local traffic, manifestly its cost is correspondingly low. Now then, if this cost analysis establishes the compensatory character of these so-called forced and compelled rates to the Pacific coast terminals, and I maintain that it does, there has never in fact been any reason, other than railroad policy, for the charging of higher rates at the shorter haul intermediate points. And this being true there was never, nor is there now or for the future, any reason why the rail carriers can not meet water competition reasonably and effectively without violating the long and short haul rule of the fourth section.

In connection with this segregation of the cost of performing this long-haul service, keep in mind the fact that every local community in this country is paying relatively high rates on all local short-haul traffic to take care of the cost of the service incident thereto and to enable this long-haul trans-State traffic to move at exceedingly low rates.

Now, the basis from which these cost figures are taken was put in evidence before the Interstate Commerce Commission and the reasonableness of our rates before the commission was fully made upon such testimony as that. That is only a small résumé of it. That testimony stands to-day absolutely uncontradicted. It has never been met. The carriers have never met it. They have been challenged to

meet it over and over again. They elect not to meet it. They will continue not to meet it. They go upon the theory that the rates can be better initiated, better maintained, and better justified upon the basis of rate comparisons, sufficiency of income, and other considerations than they can upon a cost basis; and, therefore, that is the reason why they have never met them. But when they come before your honorable committee and tell you that they can not establish the segregated or full cost of moving any particular class of their traffic that moves in as substantial a volume as does transcontinental traffic, I must respectfully disagree with them.

Now, I want to refer to another quotation here, which is from the decision of the Interstate Commerce Commission in the case known as Transcontinental Commodity Rates (32 I. C. C., 449). It strongly reinforces and sustains our position that we must have relief and that we need a declaration by Congress in order to insure to our people that permanency of relief and that security which is necessary before we can make large investments out there and begin to develop as we should. The commission is speaking about the advantages of the Pacific coast terminal rates:

There can be no question about the great commercial advantages which accrue to the town having these rates. In the contest for new factories and industries looking for locations on the Pacific coast, the town with these rates has an advantage which can not be overcome by its rivals not blessed with such rates. In one sense the competition between towns for new factories and industries is more important than the competition between factories and industries already in those towns for trade. New factories mean more workers, more money, more houses, and more people in general. After all, the struggle between these Pacific coast cities and towns is essentially one for population. The record in these cases shows that although the fact that the railroads have published tariffs eliminating San Jose, Santa Clara, and Marysville from the list of terminal points has been known only a few months, already these three points have felt the disadvantage of the possibility of ultimately losing such rates. San Jose, for example, has been unable to secure certain new industries because of the uncertainty of its terminal rate position.

Now, that very clearly exemplifies the complaint that we make. We never have heretofore been able to secure any new manufacturing or commercial industries because of the disadvantage in our rates and because of the insecurity as to transportation charges, the rates varying upward and downward from time to time at the Pacific coast terminals under the plea of meeting water competition.

In his statement before the Senate committee last week Commissioner Clark drew attention to the error in my statement before the Newlands committee, where in illustrating the blanket rates on our products of the soil, mines, and forest from the Pacific coast and intermountain territory to all eastern-defined territory, I stated there were no long-and-short haul departures in the rates covering the movement of sugar. I am glad to have this opportunity to acknowledge it and to correct it. I, therefore, wish to refer to the sugar rates at this time, moving eastbound and passing right through our territory from the California terminals to Missouri River points and Chicago.

The CHAIRMAN. You mean eastbound?

Mr. SHAUGHNESSY. Eastbound; yes. For a number of years past the rate on sugar from San Francisco to Kansas City, Omaha, and St. Paul in carload lots, 60,000 pounds minimum has been 55 cents

per hundred, or \$11 per ton, or \$330 per car. Now, that rate begins at 55 cents at Reno and blankets all the way across the country to Kansas City at 55 cents and to Chicago at 60 cents, and therefore there is no fourth section violation or discrimination in that minimum. But they carry in addition to that an 80,000 minimum, which is carried from California terminals to Chicago at 48 cents per hundred, or \$9.60 per ton, or \$384 per car, compared with which the rate at intermediate points is \$11 per ton or \$440 per car.

The CHAIRMAN. \$384 for a carload?

Mr. SHAUGHNESSY. \$384 for a carload; yes. Now, that 48-cent rate is not granted to the intermediate points, not even to Omaha or Kansas City, and it is said to be given to Chicago in order to enable the San Francisco shippers to get into Chicago in competition with the sugar from New Orleans and New York, and yet under date of February 11, 1918, the commission, in the Montana Sugar case, 48 I. C. C., 657, says the same thing in justification of the 55 cent, or \$11 per ton, rate to Kansas City and other Missouri River points, which is blanketed all the way across the country from Reno at 55 cents.

The CHAIRMAN. Now, that blanket rate from Reno—you mean 55 cents from Reno to Kansas City?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. And 55 cents from all points east of Reno?

Mr. SHAUGHNESSY. Yes; to Kansas City, Omaha, or St. Paul.

The CHAIRMAN. But where does the 55-cent rate going east cease?

Mr. SHAUGHNESSY. On the Kansas City, Des Moines line; then 60 cents to Chicago, and then it begins to graduate upward from Chicago east—that is, on the 60,000-pound carload.

Mr. SANDERS. From San Francisco to Kansas City is 55 cents, no matter what station it is delivered at?

Mr. SHAUGHNESSY. After you get to Reno; yes.

Mr. SANDERS. How far is it from Reno to Chicago?

Mr. SHAUGHNESSY. It is 1,800 miles to Kansas City and about 2,100 miles to Chicago.

Mr. SANDERS. About 2,000 miles to Chicago, isn't it?

Mr. SHAUGHNESSY. It is 2,035 miles—practically 2,000 miles.

Mr. SANDERS. And they charge nothing for that additional 2,000-mile haul?

Mr. SHAUGHNESSY. That is right. That is the blanket-rate system.

The CHAIRMAN. You mean it is 55 cents from San Francisco to Reno, and then 55 cents to any place between Reno and Kansas City?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. How far from Reno is San Francisco?

Mr. SHAUGHNESSY. Two hundred and forty-eight miles.

The CHAIRMAN. So they get as much for carrying sugar from San Francisco, 248 miles, as they do for carrying it 1,800 miles?

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. Now, then, if that is a reasonable rate from San Francisco to Reno—55 cents a hundred—then, what sort of a rate is it to Kansas City?

Mr. SHAUGHNESSY. It is less than reasonable, of course, on that theory.

Mr. SANDERS. Conversely, if it is a reasonable rate, 55 cents from San Francisco to Kansas City, 1,800 miles, what ought to be the rate from San Francisco to Reno, which is 248 miles?

Mr. SHAUGHNESSY. Of course, taken in that light it ought to be just about half, or probably very much less than that.

Mr. SANDERS. It would be about one-eighth on the mileage basis.

Mr. SHAUGHNESSY. Yes; about that.

Mr. ESCH. They have that tremendous climb over the Sierra Nevada Range.

The CHAIRMAN. From San Francisco to Reno.

Mr. ESCH. Yes. It is very expensive.

The CHAIRMAN. But in going from San Francisco to Chicago they go the same way.

Mr. SHAUGHNESSY. The point I want to emphasize on all this is that they give to Reno only the 60,000-pound minimum at the rate of \$11 per ton, which makes our carload rate \$330 if we take the 60,000-pound minimum; but if our merchants there want to take the 80,000-pound minimum they must pay the \$11 rate, or \$440 per car, for their 248-mile haul, whereas for the 2,300-mile haul on that same carload from San Francisco to Chicago they will pay only \$384. That is the point that we contend against.

The CHAIRMAN. You mean a carload of 80,000 pounds.

Mr. SHAUGHNESSY. Yes.

Mr. SANDERS. You don't get the 48-cent rate?

Mr. SHAUGHNESSY. No; we don't get the benefit of the 48-cent rate, notwithstanding our geographical location. If we take the 80,000-pound carload, we have got to pay at the rate of 55 cents, and when we apply that it makes our carload charge \$440 for the shorter interior haul points, such as Reno, Salt Lake City, Cheyenne, Denver, Nebraska, Iowa, Missouri, Wisconsin, Illinois, and, in fact, all intermediate points, as against \$384 to Chicago.

Mr. SANDERS. My interest in this matter is like yours—in the ultimate consumer. Now, what I want to ask you is, where does the consumer get any benefit by the sugar rate from San Francisco to Chicago being 48 cents?

Mr. SHAUGHNESSY. I don't think he does, except that——

Mr. SANDERS (interposing). Now, right there; is any sugar raised in California?

Mr. SHAUGHNESSY. Yes; beet sugar is raised in California, but the large movement is Hawaiian sugar. Now, we must also keep in mind the interest of the producer. The producer, of course, is anxious to get as wide a distributing market as possible from all sections of the country, and therefore the California producers of sugar are anxious to get their sugar into Chicago territory in competition with Louisiana and New York, and in that behalf I favor uniform blanket rates that will produce that effect. But what I am very strenuously complaining against is this absolutely unjustifiable discrimination in rates that makes a charge of \$440 a car for sugar to Reno, as compared with \$384 to Chicago, and therefore the only way we are going to cure that is to have Congress make an absolute declaration on that point, that no greater charge shall be made for a shorter than for a longer haul.

The CHAIRMAN. The Southern Pacific goes through Reno, does it not?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. Now, the Southern Pacific gets 55 cents per hundred for carrying sugar from San Francisco to Reno, but it will also carry it to Chicago for 55 cents.

Mr. SHAUGHNESSY. On one carload minimum the rate is 55 cents to Kansas City and 60 cents to Chicago. There is another carload rate though, keep in mind. If you raise to the larger minimum, they carry it to Chicago for 48 cents.

The CHAIRMAN. Yes; 48 cents. Now, then, from Reno to Chicago the facts are they get nothing—no additional amount. But here is what I want to find out: The Southern Pacific does not run all the way to Chicago?

Mr. SHAUGHNESSY. No, sir.

The CHAIRMAN. It goes through other lines to reach Chicago. Now, how is that 48 cents divided up between San Francisco and Chicago when the shipment actually goes through? What does the Southern Pacific get out of the 48-cent rate?

Mr. SHAUGHNESSY. The Southern Pacific, I think, takes 46 per cent of the Missouri River proportion, whatever that may be, and the Union Pacific takes 54 per cent of the Missouri River-San Francisco rate, and the Chicago lines take the balance, whatever that is. That is an agreed basis of division.

The CHAIRMAN. And 46 and 54 make 100.

Mr. SHAUGHNESSY. Yes; that is on Missouri River, though. I stopped at the Missouri River. I believe it divides 46 and 54 on the proportion between San Francisco and Missouri River, and then whatever is left from the Missouri River to Chicago goes to the Chicago lines.

The CHAIRMAN. You mean it is 46 to Reno?

Mr. SHAUGHNESSY. That is merely a percentage or division of the rate between the Southern Pacific and the Union Pacific. In the absence of the actual figures I am unable to give a better explanation.

The CHAIRMAN. Do lines other than the Southern Pacific perform their part of it without any compensation at all?

Mr. SHAUGHNESSY. No; they get their proportion of the 48-cent rate, and this is arranged by agreement between the carriers. Sometimes it is arbitrarily fixed, but usually the "rate pro rate" basis is used, which amounts to each line agreeing to take as its division of a given through rate the percentage which its local rate bears to the total of the local rates over the participating lines on the commodity and between the points in question.

The CHAIRMAN. Then what I wanted to find out was how much less do the Southern Pacific get for carrying sugar on beyond Reno than it does for that which it carries to Reno on the same basis?

Mr. BARTINE. It is very much less.

Mr. SHAUGHNESSY. Yes; that is the division basis, where two or more carriers agree to take less than their full local rates as their proportion of the through rate. Ordinarily this can not be used as the basis upon which to measure the reasonableness of a single line rate between two given points. To hold to the contrary would mean that there would be nothing but a combination of local rates, when as a matter of necessity we must have both local and through rates.

The CHAIRMAN. But the wear and tear of machinery, the cost of operation, and the amount of expense incurred in moving is several times over greater from Reno to Chicago than it is from San Francisco to Reno.

Mr. SHAUGHNESSY. Yes; that is true.

The CHAIRMAN. So that whatever the railroad fail to make from Reno to Chicago on this traffic, below what a just and reasonable rate would be, those same roads have got to make that up from somewhere else.

Mr. SHAUGHNESSY. Yes; that is true, Judge, if the rates to Chicago are in fact less than reasonable, which I do not admit.

Mr. ESCH. Of course, they do that in citrus fruits, too, don't they?

Mr. SHAUGHNESSY. Yes; but it is my firm conviction that the 48-cent, 55-cent, and 60-cent rates from San Francisco to Kansas City and Chicago are fully compensatory when the lading, the classification of traffic, and the cost of service is considered.

Mr. ESCH. If they did not do that, the Pacific coast would be glutted and the citrus industry would be flat.

Mr. SHAUGHNESSY. There is no question but what a system of blanket rating is very necessary to our territory. But we want it applied to all long-haul traffic, and the condition that we are trying to cure out there is these discriminations that the carriers elect to put in against us. I see the judge's point. Judge Sims has in mind that if any of those blanket rates as made are less than fairly compensatory, the difference going to make up full compensation must be passed on to some other product or products.

The CHAIRMAN. Some other traffic has to pay more than it should.

Mr. SHAUGHNESSY. Yes. Personally I believe that kind of inequality can be cured by universally adopting the zone-rate basis or the blanket-rate basis on all long-haul traffic—preferably the blanket rate system, because of the difficulty in finding the points where the zones should break without injury to those near the line of the break in the rates.

Mr. ESCH. You are enjoying a blanket rate, however, from the Missouri River to the Atlantic. That is a tremendous advantage. That is a bigger advantage than is allowed the Atlantic coast on westbound freight. I think the people on the Atlantic coast have more ground for complaint than on the Pacific end of it, because your blanket is a good deal wider.

Mr. SHAUGHNESSY. Well, I do not see why they should, Mr. Esch. Although their rates are graduated to some extent on westbound traffic, within that zone from the Atlantic coast to the Missouri River, practically all of the manufacturing industries of the country are located there and therefore the entire country must secure their manufactured articles from that territory. It should not be overlooked that these manufacturers have very low inbound rail rates on their raw products, and therefore I can not see that they suffer any disability. Further, another important thing is that the Chicago and all territory east thereof does not suffer long and short haul discrimination on eastbound transcontinental traffic because of the sea competition about which so much is said when the traffic moves west, while the ocean competition is just as potential in one direction as the other.

The CHAIRMAN. Suppose the Panama Canal is open and in active operation, citrus fruits could be shipped in that way, couldn't they, from California?

Mr. SHAUGHNESSY. Yes; after the refrigerating ships are provided.

The CHAIRMAN. Well, then, could you ship by the Panama Canal to New York and then from New York out to Chicago, paying the rail rates, reasonable and fairly compensatory rail rates, and reach the same market with the same amount of freight?

Mr. SHAUGHNESSY. To meet the rail haul eastbound? No; I don't think so. I don't think they would come inland anywhere near that distance. They might come inland as far as Buffalo or Pittsburg, or something like that. Then, of course, it would depend largely on the effort the railroads made to offset that competition. I believe the present blanket rates will take care of a reasonable share of the business in competition with the ocean carriers.

Mr. SANDERS. How about the banana that is raised in a foreign country, is brought to New Orleans, refrigerated in New Orleans, and shipped north by the Illinois Central; and it is the cheapest fruit that the American people get—a whole lot cheaper than anything raised on the Pacific coast.

Mr. SHAUGHNESSY. I am not familiar with that, Mr. Sanders.

Mr. SANDERS. It is brought to New Orleans in refrigerator ships, unloaded from the ship, and loaded on refrigerator cars, shipped north over the Illinois Central and other connections, and you can buy bananas at any season of the year cheaper anywhere than you can buy any citrus fruit raised on the Pacific coast. Therefore, why couldn't it be handled by ships and shipped in?

Mr. SHAUGHNESSY. I say it can be arranged.

Mr. SANDERS. You said it couldn't reach as far as Chicago.

Mr. SHAUGHNESSY. What I had in mind, Governor, was that it could not be handled around by ships and then come back inland from the Atlantic coast in competition with the rail carriers reaching Chicago direct from the fruit fields. I think as a mere transportation proposition the rail carriers moving direct from the California fruit belt would reach Chicago in better condition, better time, and cheaper than they could do it by boat line all the way around to New York and then by rail lines back into Chicago.

Mr. SANDERS. I don't doubt it, because you carry it all the way around to New York. But why not stop at a point like Mobile or New Orleans and ship it north from there?

Mr. ESCH. That is a longer distance. It is 1,800 miles down to the Gulf from St. Paul and Minneapolis, and only about 1,150 miles from New York.

Mr. SANDERS. It is about 1,000 miles from New York to Chicago and about 1,000 miles from New Orleans to Chicago.

C. W. SMITH (secretary Intermediate Rate Association). The distance from Chicago to New Orleans by the Illinois Central Railroad is 920 miles. That is the shortest line. That is the commission's figures on the Illinois Central.

The CHAIRMAN. Here is what I am trying to get at: Is the 55-cent rate and the 48-cent rate made from San Francisco to Chicago; is that a market competition rate of a water compelled rate or is it a rate below the normal? Is that 48-cent rate and the 55-cent rate a fairly remunerative rate or is it itself a reduced rate?

Mr. SHAUGHNESSY. For the reasons I have given before, covering the cost of the service of this trans-State business, it is my opinion that these rates are fully compensatory. If I understand the carriers' position correctly, they contend that these rates are forced and compelled by the Louisiana and New York sugar competition.

The CHAIRMAN. Well, is the rate made in fact, then, at least by what they call competition, or meeting competition, or to enable sugar to go farther for less money than sugar can go that goes a much shorter distance?

Mr. SHAUGHNESSY. Yes; farther than it could go on a distance tariff-rate basis.

The CHAIRMAN. Now, then, if that rate on sugar did not go through from there, then sugar coming from New Orleans could be sold higher in the Chicago market than it can with that rate.

Mr. SHAUGHNESSY. Possibly.

Mr. SANDERS. Not at all. The rate would be the same.

Mr. SHAUGHNESSY. If the Louisiana sugar interests could supply the demand, and Louisiana was meeting the competition of New York refineries also, and they together did supply the demand, it is possible that there would not be any increased price to the consumer. I don't know how that would be. But we have also got to keep in mind the development of the entire country and the welfare of the producers as well as the consumers; and what we are contending for is something in the nature of a more uniform rate scheme that will insure, as near as may be, the equal development and welfare of the United States at large, and without parceling up this territory as the manufacturing interests and other big commercial interests would like to have it, and as they are contending for here before the committee, to maintain their preferential rates, which prevents equal development of the country at large.

The CHAIRMAN. That is, the development of the intermountain country?

Mr. SHAUGHNESSY. Yes; and the great Southern States, too.

The CHAIRMAN. Several States have very strongly appealed to us, which it seems can not be developed as long as the railroads are permitted to charge them more than they do more favored sections of the country, where development does not depend upon railway rates, as does this intermountain country.

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. Therefore, trying to develop a poor country, it seems to me the intermountain country, rather than having a higher rate, ought to have a little lower, if development is to be considered.

Mr. SHAUGHNESSY. Yes, sir; I have made the contention that if any differential were really to be granted in rail transportation rates, as a matter of wise governmental policy that the differential might more properly be given to our intermediate points than to the Pacific coast points, because the Pacific coast points have a natural advantage which we do not enjoy—the ocean. But, of course, they haven't taken advantage out there on the Pacific coast of their great natural advantages. On the contrary, they have used it as a means for securing preferential rail rates all the way across the country, and from Chicago and Kansas City as well as from coast to coast, while placing the burden on us.

Mr. SANDERS. Now, getting back to the question—it is a little bit broader than the bill, but it bears on the bill. It is, in round figures, 1,000 miles from New York to Chicago, approximately, and it is approximately 1,000 miles from New Orleans to Chicago. If those two markets can more than supply the demand of that market for sugar, where is the economical reason for taking sugar from the Pacific coast, a distance of over 2,000 miles, to Chicago, which can not reduce the price to the consumer or raise the price to the producer, and merely utilizes the cars for the transportation of sugar that could well be utilized for some other purpose?

Mr. SHAUGHNESSY. There is no answer to that question, I think, Mr. Sanders, on that assumption.

Mr. SANDERS. Don't we get back to the proposition that the railroads have been making traffic for themselves by long hauls, where no necessity existed for those hauls?

Mr. SHAUGHNESSY. The railroads have been in the transportation business, Governor, they had transportation to sell, and, therefore, they have been manufacturing and selling transportation wherever they could find a market for it, and quite naturally long-haul, cross-haul, and back-haul business has grown up, much of which is wasteful and places an unreasonable burden upon the public. Take the 55-cent rate to Kansas City and the 48-cent rate to Chicago with which we have been dealing; the carriers contend these rates are forced by the Louisiana and the New York sugar competition at those points, but when we turn around and come out of Louisiana we will find, as we found the Representative from Galveston (Mr. Lallier), who appeared here, contending that the sugar rates from Louisiana to Kansas City and Chicago are fixed because of the sugar competition from California, and therefore the railroads fix the rates at Kansas City and Chicago and charge the points intermediate to the Louisiana sugar fields and Kansas City higher rates for the shorter haul. Now, do we not find ourselves going around in a circle in the attempt to justify these long-and-short-haul rates, which—when it is all said—amount merely to the fixing of rates for the concentration of traffic and the building up of favored industrial and commercial centers at Kansas City, St. Louis, Chicago, New York City, San Francisco, New Orleans, and a few others at the expense of the country at large. This artificial system of rate making has promoted and built up long hauls, cross hauls, and back hauls, and concentrated the traffic at comparatively few large industrial and commercial centers. This has not only resulted in waste of transportation, the burden of which has been carried by the public, but it was responsible for the congestion and the car shortage which resulted in the breakdown of our railway system just prior to its being taken over by the Government.

Mr. SANDERS. Then, Mr. Shaughnessy, as it is well known that the refiners of sugar on the Atlantic seaboard in and around New York and the refiners of sugar at New Orleans are more than able to supply the demand of the Chicago market for sugar, why should the cars of your western country be utilized to transport sugar from San Francisco to Chicago at a 48-cent rate, and charge you 55 cents from San Francisco to Reno?

Mr. SHAUGHNESSY. The latter part of your question is the very thing we most seriously complain of, and the thing that we want cured, if you please, Governor.

The CHAIRMAN. Isn't that Hawaiian sugar, largely?

Mr. SHAUGHNESSY. Yes.

Mr. SANDERS. It is all Hawaiian sugar. California produces no sugar of her own that I know of.

Mr. SHAUGHNESSY. They have some beet sugar.

Mr. SANDERS. There is a little industry in sugar beets, but the great amount of sugar, if I understand it, on the Pacific seaboard is Hawaiian sugar.

Mr. SHAUGHNESSY. Yes; that is true.

Mr. SANDERS. Just like the great amount of sugar refined at New Orleans is Cuban and Porto Rican sugar.

Mr. ESCH. Yes; but California has some pretty large sugar beet factories.

Mr. SANDERS. I think Nevada has some beet sugar, too.

Mr. SHAUGHNESSY. Yes; we have a very promising beet sugar industry established in the Truckee-Carson reclamation district at Fallon, Nev., also Utah, Idaho, Montana, and Colorado, and in fact, practically all of our far Western States are engaged in the beet sugar industry.

The CHAIRMAN. But the discrimination is against Utah and Colorado sugars, because they have to pay the 55 cents just the same as they do from Reno.

Mr. SHAUGHNESSY. There is a little variation in the rates from Utah; for example, from Utah common points to Chicago on the 60,000-pound carload, I think they get a 50-cent rate, or \$10 per ton, whereas on the 80,000-pound carload they get a 43-cent rate, or \$8.60 a ton.

The CHAIRMAN. They get 5 cents less than you do from Reno?

Mr. SHAUGHNESSY. Yes; but the principle is the same from the Utah points, and the long and short haul discrimination against intermediate points is imposed in the same manner.

Mr. SANDERS. The principle that I am contending for as a transportation principle is, why should not the closer sugar-producing factories supply the demand of their local market rather than be encouraged by low rates to invade some other market, when the producer or the consumer is not benefited thereby, but simply giving tonnage to a railroad?

Mr. SHAUGHNESSY. Well, that would not afford the widest market for the producers, which is necessary for the more uniform and healthy development of the country as a whole; but aside from this consideration, as long as there is no restriction provided by Congress, or as long as there is no restriction on how the rates may be established, you must expect the railroads to divide up the country in the best possible way to promote transportation and to increase transportation.

Mr. SANDERS. And their entire effort in that connection is to get a long haul, isn't it?

Mr. SHAUGHNESSY. Yes; they are interested in the promotion of long hauls and double hauls. Now, for example, on this 48-cent rate going through to Chicago, they will not give the benefit of that rate to Cheyenne, Denver, Omaha, Des Moines, Joplin, or in fact, any

point intermediate to Chicago. Why? They want to put Hawaiian sugar into Chicago and develop less than carload business back towards Des Moines in order to get the "back haul" and to help the Chicago jobber. That is the science of rate making as it has been practiced throughout all these years in the past, and it has not been made on the basis of equality to all and special privileges to none. In other words, the rates have not been made on as economical and fair a basis as they could have been made on if all of the railroads had been consolidated and operated as a unit and were operated from the standpoint of the public service under through-going and effective regulation.

Before closing I wish to refer briefly to the decision of the Interstate Commerce Commission in the case of the Butte Wholesale Grocery Co., et. al., v. Butte, Anaconda & Pacific Railway Co., et. al., decided February 11, 1918, which covers the movement of sugar from the California terminals over the circuitous routes through Montana and the Dakotas to St. Paul, where it meets the direct or short-line rate of 55 cents per hundred or \$11 per ton, whereas the rate at the intermediate Montana points is 85 cents per hundred, or \$17 per ton. The short-line route from San Francisco through Ogden and Omaha to St. Paul is 2,150 miles, while the average distance over the circuitous northern lines is approximately 2,600 miles, or 21 per cent in excess of the short-line distance. On the other hand, the average distance from San Francisco to all Montana points is but 1,400 miles, and upon complaint and investigation covering the reasonableness of the \$17 Montana rate, as well as its discriminatory feature when compared with the \$11 St. Paul rate, the commission, on February 11, dismissed the proceeding and validated the carriers' practice of assessing the rates in this manner. Upon any basis of progression, if \$17 per ton, or \$510 per car, for a 30-ton load is a just and reasonable rate for the movement of sugar to these Montana points, for an average distance of 1,400 miles, then it must fairly be assumed that for the 2,600-mile haul to St. Paul the normal, just and reasonable rate would probably be said to be not less than \$25 per ton, or \$750 per car. The absurdity of this calculation, however, is shown by testing the cost of moving this traffic upon any reasonable basis. If we apply the "trans-state" trainload cost of 2.74 mills per ton per mile, which I have used heretofore, the cost of moving this sugar for the 2,600 miles to St. Paul is \$7.12 per ton, whereas for the 1,400-mile haul to Montana points it would be \$3.86 per ton; or, even if we estimate the cost of this shorter haul service to be as much as five (5) mills per ton per mile, we still find the cost is only \$7 per ton. Therefore, the application of the St. Paul rate of \$11 per ton, or \$330 per car, to the Montana points would be highly compensatory.

While the commission found that this \$17 rate, blanketed for a distance of 408 miles through Montana, was not excessive or unreasonable, yet on the question of the reasonableness of the rate they convict themselves, for when the Dakotas are reached the rate decreases proportionately as the distance increases in the approach to St. Paul, where the \$11 rate is met. In other words, the rates to these longer-haul intermediate points in the Dakotas and Minnesota are constructed upon the basis of the \$11 rate to St. Paul, plus the local rate back, and this produces a rate at Fargo, N. Dak., for example, of

\$15, as compared with the \$17 rate at said shorter haul Montana points. Now, this very graphically illustrates the vice of this whole system of circuitous rail-line long-and-short-haul rates which Mr. Barlow and his committee for different railroad rate favored centers so urgently contended for here before this committee; but if by any stretch of the imagination anyone can justify this system of rate making to this honorable committee I am sure that he can do better than I possibly can.

Because of the reasons which I have given in this hearing I am strongly of the opinion that all of the so-called forced and competitive rates to the farther distant points to meet either water or circuitous rail competition, so called, are in and of themselves fairly compensatory, and that all of the higher short-haul rates charged at the intermediate points are excessive, unjust, and unreasonable, from which it follows that there is no justification for the continuation of a policy which authorizes such discrimination for the benefit of a comparatively few favored industrial and commercial centers at the expense of the country at large.

Compared with the railway cost figures that I have given here, Mr. S. A. Thompson, secretary National Rivers and Harbors Congress, informs me that the operating cost on the Erie Canal during recent years has been about 3 mills per ton per mile, whereas on the highly developed inland canals and rivers of Europe, where the traffic is heavy and all kinds of modern facilities are provided, the cost of operation is 2 mills per ton per mile. This also indicates the advantages that are to be secured for the public in the development and upbuilding of strong waterway transportation companies on our inland rivers and canals, and because this development is absolutely essential for the relief of the railroads at the present time in handling much heavy traffic we are, as shown in my opening statement, strongly committed to the adoption of a new policy by the Government which will encourage and protect the development of waterway transportation in every just and legitimate way. And in this connection it is our position that in order to give the necessary assurance and the protection which is vitally necessary for the large investments of capital which must be made in this new line of transportation, that the absolute long-and-short-haul legislation which we are here contending for should be passed forthwith.

The railroads are overburdened with traffic to-day. In fact, they are unable to adequately perform all of the service which is demanded of them. There is to-day a marked deficiency in the transportation facilities throughout this country, and as the war goes on this deficiency in railroad service is bound to be intensified because of the additional wants of the Army and Navy, which must receive expeditious and preferential attention, to the exclusion of ordinary commerce. We must, therefore, forthwith promote and encourage in every proper way the development of waterway transportation, which must be depended upon to serve those portions of the country where such transportation can be developed. This is not a question of substituting water transportation for railroad transportation and development; and in this connection you will recall that some of the manufacturing representatives who appeared here argued that because of the enormous investment in railroad transportation it should be protected and given preference, even to the exclusion of any new water-

way transportation development; and you also heard these gentlemen strongly indorse the long-and-short haul rulings of the Interstate Commerce Commission, which during the past have prevented the establishment of water transportation on our great inland rivers. To say the least, this is certainly not a constructive attitude. It means, if it means anything, that these manufacturing and commercial interests are satisfied with the transportation conditions of the past, and hence everybody else should be no matter what disabilities they may be laboring under in a transportation way. Now, then, Mr. Chairman, while we are here asking for justice in the matter of railroad rates and practices we are also endeavoring to treat the question of transportation constructively, and with this idea in mind we are patriotically making an earnest plea for the development and utilization of our great natural waterways, which I am sure will be found highly necessary and advantageous in supplementing the railroad transportation of this country during the present war emergency and for all future time as well.

The CHAIRMAN. Does that conclude your statement, Mr. Shaughnessy?

Mr. SHAUGHNESSY. Yes, Mr. Chairman; I will close at this time, because I do not want to encroach upon the time of my associate, Judge Bartine, whom I am sure will give you a very enlightening statement.

I have some other matters here, memoranda that I will introduce in connection with my testimony, and I ask at this time, Mr. Chairman, permission to introduce a statement made by Senator Poindexter in the *Spokesman-Review*, of Spokane, Wash., Sunday morning, November 26, 1916. It deals with the merits of our petition for permanent relief comprehensively and forcefully.

The CHAIRMAN. You have that permission.

Mr. SHAUGHNESSY. I also wish to put in evidence the testimony given before the subcommittee last week by Hon. Joseph L. Bristow, formerly United States Senator from Kansas, who made a statement in support of the legislation here under consideration.

The CHAIRMAN. You have that permission.

Mr. ESCH. That was Senator Bristow's testimony before the joint committee?

Mr. SHAUGHNESSY. No; while he did appear before the joint committee, Mr. Esch, he likewise appeared in support of the Poindexter bill before the subcommittee of the Senate last week. I shall introduce it later, but I should also like to give reference to his testimony before the Newlands joint committee, and to urge all who are interested in the railroad question to read it. I consider it one of the strongest contributions to be found on the subject.

I introduce at this point exhibits showing the rates from the Pacific Coast States to points of eastern destination on sugar, copper, lumber, canned goods, and oranges.

Rates on sugar, per 100 pounds.

From San Francisco, Cal., to—	Miles.	60,000 pounds mini- mum.	80,000 pounds mini- mum.	From San Francisco, Cal., to—	Miles.	60,000 pounds mini- mum.	80,000 pounds mini- mum.
Reno, Nev.....	244	\$0.55	.....	Fulton, Mo.....	2,195	.....	\$0.55
Elks, Nev.....	557	.55	.....	St. Louis, Mo.....	2,199	.60	.48
Salt Lake City, Utah.....	818	.55	.....	Alton, Ill.....	2,222	.....	.48
Phoenix, Ariz.....	902	.60	.....	Memphis, Tenn.....	2,253	.60	.....
Spokane, Wash.....	1,024	.56	.....	Chicago, Ill.....	2,271	.60	.48
Boise, Idaho.....	1,185	1.14	.....	Jackson, Tenn.....	2,338	.87	.....
Glenwood Springs, Colo.....	1,200	1.30	.....	Milwaukee, Wis.....	2,356	.60	.....
Albuquerque, N. Mex.....	1,202	.55	.....	Lexington, Tenn.....	2,364	.88	.....
Helena, Mont.....	1,253	.85	.....	Niles, Mich.....	2,364	.72	.60
Cheyenne, Wyo.....	1,267	.55	.....	McKenzie, Tenn.....	2,369	.90	.....
Missoula, Mont.....	1,281	.85	.....	Fond du Lac, Wis.....	2,371	.70	.....
Denver, Colo.....	1,374	.55	.....	Paris, Tenn.....	2,386	.90	.....
Casper, Wyo.....	1,487	.55	.....	Perryville, Tenn.....	2,389	.90	.....
Sheridan, Wyo.....	1,562	1.29	.....	Hollow Rock Junction, Tenn.....	2,396	.90	.....
Fremont, Nebr.....	1,737	.55	.....	Green Bay, Wis.....	2,436	.70	.....
Omaha, Nebr.....	1,783	.55	.....	Grand Raj Ids, Wis.....	2,467	.70	.....
Yankton, S. Dak.....	1,882	.62	.....	New Orleans, La.....	2,487	.85	.....
Des Moines, Iowa.....	1,919	.....	\$0.55	Nashville, Tenn.....	2,491	.80	.....
Kansas City, Mo.....	1,986	.55	.....	Paulding, Ohio.....	2,525	.76	.64
Cedar Falls, Iowa.....	2,020	.....	.545	Detroit, Mich.....	2,543	.775	.655
Moberly, Mo.....	2,049	.....	.54	Cincinnati, Ohio.....	2,557	.78	.66
Burlington, Iowa.....	2,073	.....	.51	Columbus, Ohio.....	2,585	.785	.665
Keokuk, Iowa.....	2,085	.....	.49	Chattanooga, Tenn.....	2,642	.93	.....
St. Paul, Minn.....	2,091	.55	.....	Wheeling, W. Va.....	2,714	.815	.695
Muscatine, Iowa.....	2,093	.....	.51	Pittsburgh, Pa.....	2,739	.815	.695
Davenport, Iowa.....	2,104	.....	.51	Washington, D. C.....	3,041	.885	.765
Rock Island, Ill.....	2,105	.....	.51	Baltimore, Md.....	3,066	.885	.765
Waverly, Iowa.....	2,108	.....	.545	Philadelphia, Pa.....	3,112	.895	.775
Little Rock, Ark.....	2,120	.55	.....	Richmond, Va.....	3,137	.885	.765
Clinton, Iowa.....	2,132	.....	.51	New York, N. Y.....	3,183	.915	.795
Joplin, Mo.....	2,135	.55	.....	Boston, Mass.....	3,305	.945	.825
Jefferson City, Mo.....	2,144	.60	.....			
La Crosse, Wis.....	2,161	.60	.....			

From Pacific coast group to—	Per 100 pounds (in carload lots).		
	Lumber.	Canned goods.	Oranges.
New York, N. Y. (rail and water).....	\$0.75	\$0.725	\$1.15
New England.....	.80	.725	1.15
New York, Delaware, Pennsylvania, Maryland.....	.75	.725	1.15
Illinois, Indiana, etc.....	.60	.725	1.15
Arkansas, Louisiana, Texas, Iowa, Missouri, Wisconsin, etc.....	.55	.725	1.15
Western portion of above.....	.50	.725	1.15
Kansas and Nebraska.....	.50	.725	1.15
New Mexico, Oklahoma, etc.....	.50	.725	1.15
Colorado, Wyoming, and portion of New Mexico.....	.40	.725	1.15

WASHINGTON, D. C., March 6, 1918.

MR. J. F. SHAUGHNESSY,
Colorado Building, Washington, D. C.

DEAR SIR: With reference to our conversation of the 5th, the following rates are applicable on copper matte or bullion, carloads, to Perth Amboy, N. J., per net ton:

From—	Rate.	Authority.
Clifton, Ariz.....	\$11.50	El Paso & Southwestern, I. C. C., 902.
Douglas, Ariz.....	10.05	
Anaconda, Mont.....	10.00	
Butte, Mont.....	10.00	
Helena, Mont.....	10.00	Great Northern Ry., I. C. C., A-4367.
Salt Lake City, Utah.....	10.00	
Midvale, Utah.....	10.00	
Garfield, Utah.....	10.00	
East Ely, Nev.....	11.50	Oregon Short Line, I. C. C., 1692.
McGill, Nev.....	11.50	

If you have any other points of origin in mind, I shall be glad to furnish rates upon my return, as I am leaving to-night for Chattanooga and Atlanta and will be away about 10 days.

Very truly, yours,

JOHN A. HENDERSON.

CROSS-EXAMINATION OF MR. MANN BY MR. J. F. SHAUGHNESSY BEFORE SENATE COMMITTEE ON INTERSTATE COMMERCE, LONG-AND-SHORT-HAUL HEARING.

Mr. SHAUGHNESSY. May I ask you a question or two upon that point?

Mr. MANN. Yes, sir.

Mr. SHAUGHNESSY. In the face of the present uniform rate adjustment, as ordered by the Interstate Commerce Commission, assuming that the war remains as it is for a number of years, or that after the close of the war there will be sufficient European business lasting from three to five years, as testified to by the managers of the Luckenbach and the American-Hawaiian Steamship Cos., to keep all the seagoing vessels profitably employed in the foreign trade, rather than domestically, what would San Francisco do to offset this Chicago and St. Louis competition that you are now meeting? Would you, as Mr. Lathrop suggests, begin to build up manufacturing industries on the coast and prepare to meet that competition?

Mr. MANN. I should think it would have that tendency.

Mr. SHAUGHNESSY. If that continues for the next five years, will you be prepared to meet that competition direct?

Mr. MANN. His statement with respect to building up manufactures on the Pacific coast was based upon obtaining raw material by water.

Mr. SHAUGHNESSY. By both rail and water?

Mr. MANN. You can not get them by rail unless they come by water, at the price.

Mr. SHAUGHNESSY. Could you not get raw material moving westbound to manufacturing centers, say, at San Francisco, instead of this raw material moving eastbound for manufacture at eastern centers?

Mr. MANN. What raw materials move eastbound?

Mr. SHAUGHNESSY. All kinds of iron, iron ores.

Mr. MANN. Not from San Francisco.

Mr. SHAUGHNESSY. I mean from Minnesota, Montana, and from other points.

Mr. MANN. I do not understand the question.

Mr. SHAUGHNESSY. What kind of raw material are you referring to?

Mr. MANN. The raw material—fuel and iron.

Mr. SHAUGHNESSY. Does not that move by rail as well as by water?

Mr. MANN. Yes, sir.

Mr. SHAUGHNESSY. Do they not move to the eastern centers by rail?

Mr. MANN. Yes, sir.

Mr. SHAUGHNESSY. Why, if you became a great manufacturing center, could not the rail lines begin to move those products to your manufacturing industries at San Francisco?

Mr. MANN. We are talking about rates.

Mr. SHAUGHNESSY. Yes; but we are talking about building up manufacturing industries so that you can meet the competition that you now fear you are going to receive from Chicago and St. Louis and these eastern manufacturing centers under the present uniform rates.

Mr. MANN. I do not follow you. This whole proposition of the building up of the coast is this: If we have sea competitive rates—or, to put it another way, if we have sea rates, and we do not have sea competitive rates; in other words, if you succeed in your advocacy of an absolute long-and-short haul, Mr. Shaughnessy, then we will bring the raw material for manufacture into San Francisco and the coast cities by water at a low water rate.

Mr. SHAUGHNESSY. But assume that is six or seven years off; in view of the question we are now discussing, what are you going to do in the meantime?

Mr. MANN. You tell me. I would like to know. We are in a bad condition.

Mr. SHAUGHNESSY. Assume that this law was passed, why would San Francisco be worse off during the interim than it would be anyway?

Mr. MANN. I suppose you might ask that question with respect to anything. I think that answers itself. Of course, it would not make any difference. The only difference it would make would be when water competition comes back. If it never came back, it would never make any difference.

Mr. SHAUGHNESSY. Our contention is that the immediate effect of the passage of this legislation is important to us.

Mr. SHAUGHNESSY. Mr. S. A. Thompson, secretary of the National Rivers and Harbors Congress, with headquarters at Washington, D. C., care Colorado Building, whose appearance was entered here, and who was unable to testify because all of the time was taken up by other witnesses, has handed me a statement which the Rivers and Harbors Congress, under date of March 23, published in the press of the country. I ask that it be made of record at this point.

From National Rivers and Harbors Congress, Washington, D. C.

For release Saturday, March 23.

Three hundred and seventy-six million—count them, 376,000,000—tons of freight were handled on the waterways of the United States in 1916. That is enough to fill 9,400,000 average 40-ton freight cars, or about four times as many cars as our railroads own to-day. "That," says a statement issued by the National Rivers and Harbors Congress, "shows that the waterways are still of some service even after 50 years of cutthroat competition by the railroads."

For the past 18 months the traffic history of this country has been one continuous succession of delays, congestion, embargoes, and car shortage. On May 1 and again on November 1 last year shippers asked for more than 165,000 cars which could not be supplied. Then came a winter of extraordinary severity and a coal shortage which amounted to a national disaster.

In a table prepared for Secretary McAdoo by Mr. W. P. Manse, industrial agent of the Baltimore & Ohio Railroad, it is estimated that in 18 of the principal manufacturing cities of the country the losses resulting from Dr. Garfield's celebrated order amounted in workmen's wages and manufacturers' products to \$4,344,070,000. The total losses since the car shortage began, in September, 1916, are probably not less than \$8,000,000,000, and may be as much as \$10,000,000,000.

Bad as was this huge financial loss, the sickness, suffering, and death due to lack of coal, which was due to lack of cars, were vastly worse. Worst of all was the delay in shipment of supplies and munitions which were urgently needed by our own Army and Navy at the front and by those with whom we fight to "make the world safe for democracy." At one time no less than 213 ships, loaded and ready to sail, were held in New York for lack of bunker coal.

We have hundreds of harbors and 28,000 miles of waterways classed as navigable, of which less than 2,000 miles have been sufficiently improved to have dependable channels. One-tenth of the amount lost by the people of the United States during the last 18 months would have been more than enough to thoroughly improve every mile of our navigable waterways—and if that had been done, and we had been wise enough to foster and develop water transportation, instead of allowing it to be crushed by railway competition, there would have been no car shortage, no coal shortage, no staggering financial loss, no peril to our armies and our cause through delays to ships, and many homes would still be bright which to-day are full of sorrow.

The rivers and harbors bill which provides for the maintenance and improvement of our waterways and harbors is of interest to every citizen of the United States, to those who live upon the prairies or among the mountains no less than to those who live by ocean, lake, or river. Every thousand, or million, or hundred million, tons of freight sent by water leaves freight cars free to serve those whom the waterways can not reach. Manufacturer and mechanic, merchant and clerk, farmer and minor, every mother with a son now, or soon to be in France, and every loyal citizen who wants to win this war should do everything possible to make it sure that our waterways and harbors are maintained, improved, and used to the limit of their capacity.

CROSS-EXAMINATION OF MR. SPENCE BY MR. J. F. SHAUGHNESSY BEFORE
SENATE COMMITTEE ON INTERSTATE COMMERCE, LONG-AND-SHORT-HAUL
HEARING.

Mr. SHAUGHNESSY. What were the traffic figures you gave there; the increase of 1917 over 1915?

Mr. SPENCE. In ton-miles?

Mr. SHAUGHNESSY. Yes.

Mr. SPENCE. The Southern Pacific handled last year 14,803,344,973 ton-miles of freight. During the fiscal year ending June 30, 7,632,-401,846 ton-miles.

Mr. SHAUGHNESSY. And from that you deducted, did you not, that that showed that prior to the war the Southern Pacific Co. was devoting to the service practically 100 per cent excess in service facilities?

Mr. SPENCE. Practically, in a broad way; yes.

Mr. SHAUGHNESSY. And yet, notwithstanding that you were carrying an excess of 100 per cent in service facilities, you were fixing rates and demanding that the country pay a return upon the entire facilities? That is the effect of it?

Mr. SPENCE. Yes.

Mr. SHAUGHNESSY. And that, in a general way, would, perhaps, represent the entire railroad situation throughout the United States; would it not?

Mr. SPENCE. Well, the expenses, the return must be paid; yes.

Mr. SHAUGHNESSY. I mean those excess facilities that were carried for you by the railroads, they were carried in about the same proportion throughout the country, for the railroad system as a whole?

Mr. SPENCE. I do not know as to that. You see, the situation with respect to this traffic was peculiar to itself because of the opening of the Panama Canal between the first period, because of the phenomenal tonnage that has been thrown on this railroad as a result.

Mr. SHAUGHNESSY. Well, assume that the Southern Pacific situation fairly illustrates or nearly illustrates the situation throughout the country at large, and that therefore our railroad policy under private management is such that when the war came upon us we had available for the emergency a 100 per cent excess in capacity, which could be devoted to the use of the Government during that emergency—

Mr. SPENCE. Not when our war broke out.

Mr. SHAUGHNESSY. In 1915?

Mr. SPENCE. We were not at war during 1915.

Mr. SHAUGHNESSY. Well, the war came on shortly thereafter.

Mr. SPENCE. I think that is a very different proposition. We have had burdens since we got in the war.

Mr. SHAUGHNESSY. We can admit for the purpose of the argument what you say if you want to confine it to a precise point. The point I want to illustrate is this: You drew the parallel in your argument that by reason of the railroad policy in building up the railroad system, by meeting water competition, as you have, and perfecting a very fine system, that it has resulted advantageously to the Government when we found ourselves in this war.

Mr. SPENCE. Yes, sir.

Mr. SHAUGHNESSY. Assuming when we found ourselves in this war the Government found available for military purposes an excess in railway facilities, say of 100 per cent, which was highly advantageous and necessary to the Government as it so happens. You go on to explain further in your statement that if during this time, during all of the time the railways were under private management the Government had the control, that perhaps it would not have pursued the same policy. Would you think that the Government would fail to pursue such a necessary policy in regard to its military necessities as

not to provide sufficient facilities far enough in advance to meet any necessary war emergency such as has now come upon us?

Mr. SPENCE. I drew exactly that conclusion, that the Government would pursue the same policy.

Mr. SHAUGHNESSY. That the Government would pursue the same policy with reference to furnishing facilities?

Mr. SPENCE. Yes; and in reference to making rates.

Mr. SHAUGHNESSY. I do not think the one theory follows the other.

Mr. SPENCE. Of course it does, if the Government owns the railroads, it would do exactly what the railroads do, if it wants to make the plant pay.

Mr. SHAUGHNESSY. The Government would not place upon the public the burden of paying in freights and fares a return upon a 100 per cent excess. My idea of what the Government would do would be this. They would say, "Now, then, we are going to provide here a great transportation system of railways, 50 per cent of their capacity we must devote to the service of the public as being really necessary and beneficially useful to the public." They would take care of the public needs. Then, proceeding a step further, our War Department estimates that in time of great war emergency or war necessity, that we will need 50 per cent in excess of that capacity in order to take care of the public, and the Nation's needs as well. Therefore, they would say, "We will make a division of these charges here; we will charge to the public its proportion of the use of the facilities, which are actually and beneficially devoted to the public service, and the other 50 per cent of the facilities we will carry as a war-preparation measure and we will not charge that against the shipping and traveling public."

Mr. SPENCE. Who will they charge it to?

Mr. SHAUGHNESSY. They will charge it to the Nation at large—

Mr. SPENCE. Is not that the public?

Mr. SHAUGHNESSY. Instead of to the shippers and travelers. There is a very marked difference there as to charging 50 per cent to the shippers and travelers or 100 per cent, or making a division of it and charging 50 per cent to the shippers and travelers and the balance, or 50 per cent, to the Nation at large. That is the rule of public regulation on that score. And therefore I say that if the Government should operate, or does operate for the future, that is my idea of the just and equitable method in which they will work out this system of rate making.

Mr. SPENCE. Do you think that is the way they have started?

Mr. SHAUGHNESSY. No they have not started; they have not got their feet under them yet. It is going to take time to work it out.

The CHAIRMAN. Have you finished?

Mr. SPENCE. Just a moment, Senator. I want to refer—perhaps this inquiry is addressed to one bill, but another bill has been introduced, and presumably will be in committee, Senate resolution 3777, I find, omits the language, "subject to the provisions of this act." That is to say, this provision of the fourth section we are now reading, or to charge any greater compensation as a through routing than the aggregate of the intermediate rates, subject to the provisions of this act. While in this new Senate bill 3777, "or to charge any greater compensation as a through rate."

The effect of the change in that bill would be to facilitate the making of or disturbance of interstate rates by State commissions. In other words, the change would permit charging more than the combination of two intrastate rates or of interstate and intrastate rates, notwithstanding that a higher rate, though an intrastate rate, may have been found reasonable and established by the commission, so that unless Federal control of interstate rates is going to be partly surrendered, there would be a very widespread effect of State rates on interstate rates if that clause does not remain in the bill. I wished simply to call attention to that as a question of public economy.

Mr. SHAUGHNESSY. What would be your idea as to the other provision in the other bill?

Mr. SPENCE. That is an absolute fourth section. About the combination of the locals?

Mr. SHAUGHNESSY. Yes; about the combination of locals.

Mr. SPENCE. I heard some one—I guess you—recommended an elimination of that; I did not quite understand why; it would encourage reconsignment, reshipment.

Mr. SHAUGHNESSY. No; my idea of that was that it is not a scientific measure of a reasonable through rate; it is arbitrary in the first place. In the second place, it gives to the Interstate Commerce Commission, or helps to give to the Interstate Commerce Commission, exclusive jurisdiction over the local intrastate rates, and makes the State-made rate a part of the through interstate rate, subject to the jurisdiction and control of the Interstate Commerce Commission.

Mr. SPENCE. I do not believe public policy would be served by the elimination of those words, which are that the railroads will not be permitted to charge more than the combination of locals; that is, a combination of locals made under this act. The through rate might exceed that. As long as a man ships through the carriers could then charge them that through rate and ignore the existence of the lower combination of locals, the points through which it passed. Just why Congress should go backward a step in that way I do not understand.

Mr. SHAUGHNESSY. It might result in two systems of rates?

Mr. SPENCE. Yes, sir.

Mr. SHAUGHNESSY. But result in measuring each rate according to its peculiar circumstances and conditions, both local and through.

I submit at this point a set of resolutions adopted by the Chamber of Commerce of Greensboro, N. C., strongly indorsing the Poindexter bill, S. 313; also documentary testimony of Mr. Garland Daniel, secretary of the Greensboro Chamber of Commerce, which very clearly and forcibly illustrates the long-and-short haul discrimination in North Carolina and other Southern States.

THE CHAMBER OF COMMERCE OF THE CITY OF GREENSBORO, N. C.—RESOLUTION IN FAVOR OF BILL S. 313.

Whereas through the efforts of the Intermediate rate association and its president, Mr. J. F. Shaughnessy, to secure an amendment to the fourth section of the act to regulate commerce which will forever prohibit the railroads from charging a higher rate for the movement of freight and passengers for a shorter than for a longer distance when the shorter haul is included within the longer, and over the same line, and in the same direction: Therefore be it

Resolved, That the Greensboro Chamber of Commerce indorse the Poindexter bill, S. 313, and that the secretary be instructed to mail a copy of this resolu-

tion to the Senators and Congressmen of North Carolina, urging them to support this bill, as we believe we have been discriminated against for years, and that this bill will give us permanent relief.

R. E. STEELE,
L. RICHARDSON,
C. C. HUDSON,
Committee on Resolution.
C. C. TAYLOR, *President.*
GARLAND DANIEL, *Secretary.*
Greensboro Chamber of Commerce.

THE CHAMBER OF COMMERCE OF THE
CITY OF GREENSBORO, N. C.,
March 25, 1918.

Mr. J. F. SHAUGHNESSY,
President Intermediate Rate Association,
401 Colorado Building, Washington, D. C.

MY DEAR SIR: Find inclosed comparative analysis showing discrimination on typical commodities to Greensboro, N. C. Subject, the long-and-short haul.

I have endeavored to give you a few commodities, and could make a list much more lengthy, but judging from your telegram, I see that you wish a very short and concise illustration. I hope the inclosed will meet with your approval, and if you should deem it necessary for a delegation to come, I shall be pleased to send one.

Please advise me as to your success.

Yours, very truly,

GARLAND DANIEL, *Secretary.*

Comparative analysis showing discrimination on typical commodities to Greensboro, N. C.

Stove trimmings.—Cleveland to Greensboro, 568 miles, rate 93 cents; Cleveland to Lynchburg, 454 miles, rate 43 cents; Lynchburg to Greensboro, 114 miles, rate 50 cents.

Sugar and molasses.—New Orleans to Greensboro 854 miles, rate 47 cents; New Orleans through Greensboro to Lynchburg, 968 miles, rate 28 cents. Discrimination of 21 cents in favor of the longer haul.

Canned goods from common shipping points on Pacific coast.—Cars, 40,000 pounds, to Virginia cities, per hundredweight, 85 cents; to Greensboro, \$1.07. Cars, 60,000 pounds, to Virginia cities, per hundredweight, 72½ cents; to Greensboro, 94½ cents.

Canned salmon from common shipping points on Pacific coast.—Cars, 70,000 pounds, to Virginia cities, per hundredweight, 77 cents; to Greensboro, 92 cents.

Dried fruits from Pacific coast.—Cars, 40,000 pounds, to Virginia cities, per hundredweight, \$1.10; to Greensboro, \$1.32. Cars, 60,000 pounds, to Virginia cities, per hundredweight, \$1; to Greensboro, \$1.22.

Dried beans from Pacific coast.—Cars, 40,000 pounds, to Virginia cities, per hundredweight, 85 cents; to Greensboro, \$1.02. Cars, 50,000 pounds, to Virginia cities, per hundredweight, 75 cents; to Greensboro, 92 cents.

On a 60,000-pound car of canned fruits we pay \$132 more than our competitor who lives in Richmond, Va., and we are nearer the original shipping point than Richmond.

60658—18—33

Rates from southern points to Greensboro, N. C., and passing through Greensboro to Lynchburg, Va., an interior city 114 miles beyond, and to Richmond, Va., an interior city with water rate also, 189 miles beyond.

From—	To Greensboro.		To Lynchburg.		To Richmond.	
	Carload cents per hundred-weight.	Less than carload cents per hundred-weight.	Carload cents per hundred-weight.	Less than carload cents per hundred-weight.	Carload cents per hundred-weight.	Less than carload cents per hundred-weight.
Atlanta, Ga.:						
Nails and barbed wire.....	24	33	17	21		
Iron and steel bars.....	24	33	17	21		
Back bands.....	74	74	51	51		
From Buford, Ga.:						
Leather.....	32	56	32	51		
Harness, bridles, and collars.....	62	62	51	51		
From Columbia, S. C.: Cotton rope.....	36	.....	28	.....	

Food stuff.—Cincinnati to Richmond, 580 miles, rate 11 cents; Cincinnati to Greensboro, 579 miles, rate 24 cents; discrimination 13 cents. Memphis to Greensboro, rate 23 cents; to Richmond and Lynchburg through Greensboro, 21 cents.

Canned vegetables.—Indiana points to Richmond and Lynchburg, rate 22 cents; Indiana points to Greensboro and Lynchburg, rate 43 cents.

Respectfully submitted,

GREENSBORO CHAMBER OF COMMERCE,
GARLAND DANIEL, *Secretary*.

GREENSBORO, March 25, 1918.

MR. SHAUGHNESSY. I submit at this point an article written by Senator Miles Poindexter, for the *Spokesman-Review*, of Spokane, Wash., and published November 26, 1916. The matter is handled in plain spoken and forceful language by the Senator, and his analysis of the economic side of the question is, we believe, unanswerable. I request that the Senator's statement be read and given thoughtful consideration by all who have occasion to deal with the legislation here under consideration.

[The *Spokesman-Review*, Spokane, Wash., Sunday morning, November 26, 1916.]

POINDEXTER TO CARRY LONG-AND-SHORT-HAUL FIGHT TO CONGRESS.

Senator will introduce bill to relieve freight rates to the interior—Senator urges action—declares water competition is not real and people should not stand for injustice.

Spokane's freight-rate case is to be carried to the floor of Congress. After 20 years of contest before the Interstate Commerce Commission, with its rulings and counter rulings, the fight is now to be taken up on the broad grounds involving the whole question of the long-and-short-haul clause of the interstate commerce act.

As soon as Congress convenes, early in December, Senator Miles Poindexter will introduce a bill for the amendment of the interstate commerce act and providing for an absolute long-and-short-haul clause. The present so-called long-and-short-haul clause provides that a railroad shall not charge more for a short haul than for a long haul, except in certain cases involving water competition, which leaves the matter of determining whether these conditions do exist entirely with the Interstate Commerce Commission.

Senator Poindexter's bill will provide simply that a railroad shall not charge more for a short haul than for a long haul over the same line and will be abso-

lute with the Interstate Commerce Commission. It is by taking advantage of the "provisions" and "exceptions" in the present law that the railroads and the coast cities have been able repeatedly to frustrate Spokane's attempts to get just rates.

PROVISIONS OF THE BILL.

The following is a tentative draft of the proposed bill:

"That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this act; but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance.

"Whenever a carrier by railroad shall, in compensation with a water route or routes, reduce the rates on the carriage of any species of freight to or from competitive points it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission."

SENATOR URGES ACTION.

Senator Poindexter in discussing this matter yesterday said:

"The people ought not to stand for it. Fundamentally it is against justice and against every sense of right and square dealing, and in a country where the public opinion is supposed to prevail it should assert itself and not argue, but demand justice.

"There is no real conflict of interest in this matter between the coast cities and the people of Spokane for the reason that the discrimination in favor of the coast cities by the railways is based on the assumption that the coast cities have water transportation. In other words, the fundamental advantage that the coast cities have is the fact that they are located on harbors. We can not take that advantage away from them without removing the harbors. We don't expect to do that. We don't propose to interfere with the Pacific Ocean.

"It has been argued that we are trying to take away their natural advantage. Their natural advantage is water transportation, and, of course, we could not take that away if we tried.

WATER COMPETITION IS NOT REAL.

"In regard to a very great part of the railroad tonnage there is no real water competition. It is purely imaginary and theoretical, and the assumption of it by the Interstate Commerce Commission and other parties in interest is absolutely sham and fictitious. On shipments from Chicago, for instance, every one knows they never ship by water to the coast, but adways ship directly west by rail, and yet the coast cities are allowed grossly discriminatory rates because of alleged water competition which does no in fact exist.

"As to other shipments from Atlantic ports there is in normal times either actual or potential water transportation, formerly by the Horn and now to a large extent by the Panama Canal. If the railroads can meet these water rates at a profit on the long haul to the coast, of course, they should be allowed to do so, and by the same showing they can afford to haul the goods the shorter distance over the same line to Spokane at a profit for the same rates and, as a matter of fact, for less rates, so far as that is concerned.

"If the railroads can not make a reasonable profit on the shipment, then the freight should go by water and would go by water, so that the coast cities would not be injured in any way, but still get the lower rates. The railroads, however, ought not to be allowed to limit or destroy water transportation by making unreasonably low rates to the coast and recoup themselves at the expense of the people of the interior. The whole matter is very simple and very plain.

DISCRIMINATION AGAINST INTERIOR.

"Under the system prevailing at present Spokane and all the people of the vast interior pay the greater part of the enormous expenses of improving harbors and digging the Panama Canal and then, instead of being benefited by it as

they should be, have it used as a weapon to destroy their commercial growth and prosperity. The only way in which they will get their due from these great improvements is by receiving, in accordance with their several situations, a proportionate affect of the reduction in rates from these transportation facilities.

"It is contrary to every economic law for the railroads to continue the ancient policy of transporting goods the longest possible way to the consignee, as is the case when they carry them to the end of the line and then ship them back to the interior. The law of economics requires that goods shall be delivered by the shortest and most direct route and that is the system which must ultimately prevail.

"In this matter not only should there be united action and cooperation of what are called the Rocky Mountain States and cities, but the entire interior country, including the plains States of the Middle West, which suffer like discriminations in varying degrees involving the same identical principle, should be communicated with so that their influence can be concentrated in support of a particular measure such as that which is proposed here."

Mr. SHAUGHNESSY. I submit at this point copy of letter from O. P. Gothlin, formerly chairman of the Ohio railroad commission and president of the National Association of Railway Commissioners in 1913, to Senator Miles Poindexter. The long-and-short-haul question is treated in a very intelligent and constructive manner, and I therefore invite a reading and consideration of Mr. Gothlin's views.

PUBLIC SERVICE COMMISSION OF INDIANA,
Indianapolis, April 13, 1918.

Mr. J. F. SHAUGHNESSY,
*President Intermediate Rate Association, 401 Colorado Building,
Washington, D. C.*

DEAR SIR: Referring to our conversation of last Saturday p. m., I am enclosing you herewith copy of a letter I have made to Senator Poindexter, relative to Senate bill 313.

I sincerely hope that it may do some good.

Yours truly,

O. P. GOTHLIN,
*Formerly Chairman Public Service Commission of Ohio, and
in 1913 President National Association of Railway Commissioners.*

INDIANAPOLIS, IND., April 12, 1918.

HON. MILES POINDEXTER,
United States Senate, Washington, D. C.

DEAR SIR: I desire to express my emphatic endorsement of Senate bill 313 and my sincere hope that it may become law. Permit me to quote from a letter I wrote last fall to the conference committee on national preparedness, New York City:

"I have read with interest your recent circular, more particularly that part of it relating to the development of water transportation.

"Kindly allow me to suggest that the first step in the direction of water-carriage development is to persuade the Interstate Commerce Commission to change its attitude toward the enforcement of the fourth section of the act to regulate commerce. The persistent violation of the intent of this section has made river traffic in the United States so unprofitable that it has almost ceased to be a factor in the commercial world. The act to regulate commerce was amended in 1910 to nullify the effect of decision of the Supreme Court in the Alabama Midland case (168 U. S. 144), wherein it was held that competition between a steam line and a water line at a destination point created dissimilar conditions and circumstances that justified the rail carrier in charging higher rates to intermediate points than to the destination point. The words, 'similar conditions and circumstances' were eliminated from the fourth section by the act of 1910, but the Interstate Commerce Commission was clothed with power to grant authority to rail lines to make lesser rates to destination points than to intermediate points when the situation justified. They have been so lavish in bestowing this authority that the general situation is

just about the same as it was prior to 1887. In other words, the legislation intended to accomplish a good purpose has availed little because not enforced.

"In the above case cited (168 U. S., 144) this language occurs:

"When the rates to Montgomery were higher a few years ago than now actual water-line competition by the river came in, and the rates were reduced to the level of the lowest practical paying water rates, and the volume of carriage by the river is now comparatively small."

"A sad commentary. What became of the river transportation? Destroyed by rail competition, and to do it the rail line had to make rates that were non-compensatory, and consequently to apply unduly high rates to unprotected intermediate territory to recoup. A most unjustified economic waste. This is illustrative of the situation over the United States.

"So long as the rail lines may drive water lines out of existence by unfair competition—that is, by unduly low rates to competing points—and are allowed to make up the deficit by unduly high rates to intermediate points, there can be no development of water transportation facilities. In the whole field of transportation no practice has been of so great an influence for evil as that of discriminating against unprotected local territory that the carriers might enjoy the privilege of destroying water traffic.

"Within the past two years the Interstate Commerce Commission issued an order authorizing the transcontinental lines to establish to Pacific coast ports rates lower than in effect to intermediate points and as justifying the decision recited in the opinion that the opening of the Panama Canal would reduce the cost of water transportation between the Atlantic and the Pacific seaboard. This is the very reason why the transcontinental lines should not be allowed to make lower rates to Pacific coast ports than to intermediate points. The Federal Government expended millions in the construction of the Panama Canal for the very purpose of fostering water traffic between the Atlantic and Pacific seaboard, and by the action of the Interstate Commerce Commission this expenditure was in vain so far as development of water transportation is concerned. Of course the canal is a military necessity, and the expenditure is justified for that reason alone. Nevertheless the intention was also to foster and develop ocean transportation.

"So long as the transcontinental railroads may establish unduly low rates to the Pacific coast and make up the deficit by correspondingly high rates to intermediate territory capital dare not invest in ships. Rail rates should be adjusted so as to place all territories served on a relatively equitable basis and return a reasonable margin of profit to the carrier. When a railroad charges more to transport a ton of freight to Salt Lake City from Chicago than it charges to transport the same ton to San Francisco, 50 per cent farther, either the Frisco rate is unduly low or the Salt Lake City rate is unduly high. A railroad must sell service at prices that will return revenue sufficient to pay operating expenses and a reasonable profit. Of course if some service be sold at a price that returns a margin of only 5 per cent, or no margin at all, some other service must be sold at a proportionately higher than reasonably profitable price, or there is a deficit. Why should rail carriers be allowed to levy an undue tax on intermediate territory to enable them to transport to water competing points at unprofitable rates for the purpose of crippling water transportation?

"Many years ago, when the great State of Ohio embraced within its borders but a fraction of its present population, it exhibited a most remarkable spirit of enterprise by constructing a magnificent system of canals. When railroad transportation came into the field, far-seeing statesmen enacted a long-and-short-haul law for the very purpose of protecting the waterways constructed at so great an expense. But the law was never enforced and canal transportation was killed. Had the Ohio long and short haul been properly observed, Ohio would now have an effective transportation system independent of and supplemental to the rail service that has not been able to keep up with the demands of commerce. As a result of the failure to enforce the law, the once magnificent system of canals has decayed into a condition of innocuous desuetude.

"There is another point of view from which this question should be considered. The nullification of the fourth section intent by administrative action fosters and encourages circuitous transportation; a deplorable economic waste. No other single influence has operated so extensively to deplete the available car supply. It is undoubtedly true that the transportation of freight over the United States to-day involves at least 40 per cent of unnecessary mileage, which is an economic waste of power and an unnecessary detention of equipment and produces a total operating cost far beyond what it would be were carriers required to use direct routes.

"Public is entitled to the advantages of both boat and rail transportation, and each class is entitled to fair pay for the service rendered. Now, when the rail lines can not adequately meet the transportation demands, we are feeling the effects of the attitude of regulating bodies toward water transportation in the past, and the effects are serious. Instead of having ample water carriage facilities to supply the deficiencies of rail carriage when they are so badly needed, we find a woeful lack of them. The first step toward a rejuvenation of water transportation is to enforce the fourth section of the act to regulate commerce in accordance with the intent of Congress when it was enacted."

"Since the enactment of the act to regulate commerce in 1887 violations of the long-and-short-haul principle have not obtained to any great extent in that part of the United States where the density of traffic is greatest; that is, north of the Ohio and Potomac Rivers and from the Mississippi River to the east line of New York. Such a policy on the part of the carriers would not be tolerated. To illustrate, were rates to and from the very large number of manufacturing centers located within 100 miles of Chicago graded 10, 20, or 25 per cent higher than to and from Chicago, those centers would be depopulated. It would be necessary for the carriers to establish limits circumscribing the favored territory. Any line so established would be extended here and there as the power of the affected interests dictated until in time it would be abolished entirely; because each extension would afford incontrovertible argument to the industry just beyond that it must be taken in to eliminate the obvious discriminatory situation.

"No legislature, court, or commission has the right to require one man to pay any part of another man's transportation tax. Rates made to terminal points that yield less than a fair margin make it absolutely necessary to impose at other points rates that pay more than a fair margin or there is a deficit. Railroads must earn from the rate of service revenue sufficient to pay operating expenses and a reasonable profit on investment. If some transportation is sold at prices that do not so yield, the deficit must be made up in some way, and the only way it can be made up is by unduly taxing other patrons.

"The grand aim of regulation is to eliminate discrimination, and the greatest discrimination in the whole field of transportation is the result of the gross violations of the long-and-short-haul principle permitted by regulative bodies, misled by the subtle sophistries of those desiring to profit by the loss of others.

"The Federal Government would not undertake to confer a jobbing monopoly upon particular commercial centers and prohibit wholesale dealing at all other places. The public would not stand it, yet the carriers in some localities have arrogated to themselves the right to do that very thing. By their rate structures they have said to certain centers, you may have the reshipping monopoly for the territory we have assigned to you, and have enforced their edicts by so adjusting rates as to make it impossible for other centers to compete. The deplorable fact is, that this arbitrary assumption of undue and unjust power has been not only condoned but affirmatively indorsed by the tribunal erected for the purpose of protecting public rights.

"Economists have for years warned us against the evils of aggregating great populations in cities. Were it possible to apply universally throughout the United States the policy of imposing higher rates to intermediate territory than to favored terminals, commerce and manufacturing would naturally gravitate to those favored centers. It could not be otherwise. With the national freight-rate structure framed on sane principles, the population will naturally distribute itself so as to form a wholesome, healthful, economic organization, nowhere unduly dense, nowhere unduly sparse, supply within reach of demand, transportation conditions simplified, congestion eliminated.

"If Senate bill 313 became a law, its salutary influence will be felt almost immediately, more especially, of course, in those localities now suffering from the maladministration of carriers and regulative bodies. Territories which have existed in spite of adverse conditions will flourish under natural conditions.

"It is to be deplored that it were necessary to pass this bill: that existing law has not been administered as Congress intended. Legislation has done its share toward sane and just regulation, but the administration of regulative law has failed. The results of such failure are grievously unjust conditions: the divesting of some localities of their natural advantages, that artificial advantage might be conferred upon other localities. It therefore becomes necessary to make the long-and-short haul mandate absolute, that even-handed justice may obtain everywhere throughout the country."

Yours, very truly,

O. P. GOTHLEN.

Mr. SHAUGHNESSY. I incorporate at this point copy of letter from Hon. Hylen H. Corey, railroad commissioner of Oregon, in which the long-and-short-haul question is dealt with forcefully and constructively:

PUBLIC SERVICE COMMISSION OF OREGON,
Salem, April 3, 1918.

Mr. J. F. SHAUGHNESSY,
President the Intermediate Rate Association,
Washington, D. C.

DEAR SIR: Your letter addressed to this commission, with which was inclosed a copy of H. R. 9928 and minority report of Senator Poindexter.

As eastern Oregon representative on this commission, let me advise that my constituents are very largely interested in this matter and I feel constrained to further their views to the extent of my ability. I do not think that I can add any new points to those presented by the able representative of the intermountain districts. The testimony of Mr. Bartine before the Newlands committee receives my unequivocal indorsement.

Personally, I think there should be nothing to justify a higher rate to a point intermediate than to a more distant point. Water transportation is inferior to rail service in many ways. It is slower, uncertain of arrival and departure, offers none of the privileges, such as diversion, stopping in transit, etc.; no switching at terminal points; claims for loss and damages are not so readily settled; the maritime laws seem to give more protection to the boats and the shippers must go to the courts for redress. There are other advantages which the railroads have over the boats.

Why, then, should the public expect a high standard of service, such as is offered by railroads in normal times, at nearly as low rates as apply by water? It would be as reasonable to expect the express companies to charge as low a rate as by freight. The points served by water can use their natural advantages, if they so desire; in fact, should do so, but this would seem to be a handicap to interior points, to which the railroads should not add by discriminating against them. As you so forcibly state, "the interior points might argue with good grace that they themselves are entitled to the preferential rates."

It is true that big business has been built at coast points, many of which have invested on account of the lower rates which obtained. The change would not, of course, inure to their benefit, but that should not militate against the righting of a wrong. On transcontinental rates zones might be established basing New York to Pacific coast, graded back to, say, Spokane, Baker, Reno, Ogden, Denver, and the Missouri River, etc.; then another set from Rochester, Syracuse, etc.; then from Buffalo and what is now termed western terminal of trunk lines.

I see no reason why it could not be worked out in much the same manner as rates from eastern trunk-line territory to Central Freight Association territory are now based New York to Chicago. If the territory to and from was well defined and an inflexible rule made that rates must grade back according to zone, that the rates once established could not be changed for a year except under extraordinary circumstances, I believe business would soon adjust itself to the conditions. Why should not the Pacific coast encourage higher rates from the East instead of asking lower rates, thus forcing manufacturing interests to locate here instead of shipping their products from the East? The jobbing interest may not see it this way, but the resources of this western country are so great that it would seem that we should manufacture all or nearly all we need. This would upbuild the country surrounding and create demand for even more jobbing houses.

It would be well to bear in mind that the foregoing refers to west-bound rates exclusively. The situation east bound is quite different. For example, rates on lumber are made in competition with the South; both reach the same markets in the Middle West. Our canned fish comes in competition with the New England product. Fruit, as well as other products from the western country, must have blanket rates to get them to market.

I am sending copy of this letter to our Representative in Congress, Hon. N. J. Sinnott.

Very truly, yours,

H. H. COREY.

TESTIMONY OF MR. J. F. SHAUGHNESSY, BEFORE THE SENATE COMMITTEE, MARCH 13 TO 21, INCLUSIVE.

WEDNESDAY, MARCH 13, 1918.

**UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.**

The subcommittee met at 10 o'clock a. m., pursuant to call by the chairman, at 410 Senate Office Building, for the purpose of considering the bill, S. 813, as follows:

Be it enacted, etc., That section four of the act of Congress of February fourth, eighteen hundred and eighty-seven, to regulate commerce, and as subsequently amended, be, and the same is hereby, further amended so as to read as follows: "It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act, but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance.

"Whenever a carrier by railroad shall, in competition with a water route or routes, reduce the rates on the carriage of any species of freight to or from competitive points, it shall not increase such rates unless after hearing and an order granting permission therefor by the Interstate Commerce Commission."

This act shall take effect sixty days after its approval by the President.

Present: Senator Miles Poindexter (presiding) and Senator Atlee Pomerene.

Also present: Senators Shafroth and Henderson.

The CHAIRMAN. This hearing was set for this hour and day on Senate bill 313. I understand that Mr. Shaughnessy, of Nevada, is ready to proceed with his statement. If so, we will hear him now.

STATEMENT OF MR. JOHN F. SHAUGHNESSY, MEMBER OF THE NEVADA RAILROAD COMMISSION AND PRESIDENT OF THE INTERMEDIATE RATE ASSOCIATION.

MR. SHAUGHNESSY. My name is John F. Shaughnessy. I am a member of the Nevada Railroad Commission and also a member and an officer of the Intermediate Rate Association, a voluntary organization comprising the members of all intermediate discriminatory rate territory in Southern and Western States.

MR. SHAUGHNESSY. Now, Mr. Chairman, may we, at this time as a matter of information, inquire if we have the privilege of introducing the testimony put in evidence before the Newlands committee, so-called? The Newlands committee covered the railroad question in general, and incidentally took up the matter of the long-and-short-haul investigation throughout the intermountain territory, while on its trip to San Francisco in November and concluded those hearings at Washington after its return in December, 1917. Now, the record in that case, due to the taking over of the railroads, an unforeseen happening, has practically sidetracked the operation of

that committee, and, perhaps, the rendering of a report for some time to come, if not indefinitely. It may never come to life again. We feel that our testimony is of such vital nature and was prepared at such great labor, and so illustrates the long-and-short-haul situation that it should now be introduced and made of record as live matter before this honorable committee, and with that idea in mind I ask that it be introduced and made of record in this hearing.

The CHAIRMAN. Well, I do not know that it would be advisable to make a general order allowing the reprinting in this hearing of all that testimony, but if you desire to incorporate the more important parts of it in your testimony, that may be done, and it would be better to refer to the volume and page of the report of that hearing, so that by reference the entire record will be made immediately available.

Mr. SHAUGHNESSY. It will be necessary, then, Senator, for each individual witness, at this time, to go into the question in considerable detail. I thought, perhaps, by introducing our testimony before the Newlands committee that we could refer to the most important points that needed emphasis and thus save time. However, we will proceed upon the lines suggested in your ruling. At this point I wish to give reference to the testimony of Mr. William M. Gardiner, president of the Reno Commercial Club, given before the Newlands committee, at San Francisco, and reported in part 13, pages 1502 to 1511 and 1568 to 1604, and to the testimony of Hon. H. F. Bartine, chairman of the Nevada Railroad Commission, reported in the same volume, pages 1750 to 1797.

At this time I wish to enter the appearance of those present, who will take part in the hearings before the committee.

Immediately following my opening statement, our witnesses will appear in the following order: Senator Joseph L. Bristow, of Kansas; Mr. J. B. Campbell, for the Spokane Chamber of Commerce, and all of eastern Washington; Mr. W. S. McCarthy, for the traffic bureau of Utah, and incidentally up until this time this organization has represented the entire State of Utah, but a railroad commission has recently been created and is a party of record here, therefore Mr. McCarthy will represent the entire Utah situation; Hon. F. A. Jones, chairman of the Arizona railroad commission, for the State of Arizona, and he will also represent the railroad commission of New Mexico and certain commercial and traffic organizations of southeastern California and western Colorado as well; Hon. A. L. Freehafer, a member of the public utilities commission of Idaho, and Mr. Leonard Way, rate expert for the public utilities commission of Idaho; Hon. H. F. Bartine, chairman of the Nevada Railroad Commission, for the State of Nevada, and including the Reno Commercial Club.

A memorandum has just been handed me stating that Attorney Frank Lyon, of Washington, will appear and represent the Luckenbach Steamship Co.

That constitutes the appearances that have thus far appeared. We are in communication, however, with many representatives of Southern and Western States who have given notice that they may later be here, or if unable to do so that they will authorize the Intermediate Rate Association to enter their appearance as parties of record, and to represent them.

Then follows a portion of the same opening statement, which has already been made here in this hearing, and which is eliminated to avoid duplication.

Below is an interruption by Chairman Poindexter during the opening statement of Mr. Shaughnessy relating to the final order of the Interstate Commerce Commission in the Intermountain Rate cases made January 21, 1918, to become effective March 15, which order revived the commission's order of June 30, 1917, and removed, during present conditions, the back-haul discrimination against the short-haul intermediate points. When it is considered that there has been no effective water competition, upon which these discriminations were excused, since the slides in the Panama Canal in 1915, we have here in the briefest form possible why appeal is being made to Congress at this time.

The CHAIRMAN. May I interrupt a second there to refer to the fact that that question was raised in the hearing on the Government railroad control bill that was here, and a number of the members of the Interstate Commerce Commission were present, and railroad attorneys, and the matter was brought before them and pretty sharply discussed, and this revival of this transportation that you speak of followed immediately after that?

Mr. SHAUGHNESSY. Yes, sir; that is true, Senator; quite true. In fact, nothing was being done until effort was made, I think, before the Committee on Interstate Commerce here, as I recall it. I do not think it is necessary to mention any names, but I know that various members of this committee did get after the Interstate Commerce Commission very sharply at that time as to why the delay in rendering this opinion, and the Interstate Commerce Commission seemed to be laboring under the delusion at that time that as the railroads were to be taken over by the Government that perhaps its action was not necessary at that time, but following the commission's hearing before the Committee on Interstate Commerce I know the decision was rendered promptly.

The CHAIRMAN. My only purpose in mentioning that was not to criticize anybody at all at this time, but to call attention to the fact that action by Congress or committees of Congress is sometimes necessary, in order to get adjustments of these things.

Mr. SHAUGHNESSY. I agree with you fully, Senator, and I think it is vitally necessary, and for the future that more and more, as time goes on, there may be necessity for greater appeal made direct to Congress from the decisions of the Interstate Commerce Commission.

FRIDAY, MARCH 15, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 o'clock a. m., at room 410. Senate Office Building, Senator Poindexter (chairman) presiding.

Present: Senator Pomerene.

The CHAIRMAN. I think we will proceed with the hearing, gentlemen.

Mr. SHAUGHNESSY. Mr. Chairman, I wish to open by entering other organizations as parties of record in this proceeding, representing intermediate points throughout Southern and Western States.

I first want to submit the name of Charles W. Smith, commerce attorney, Washington, D. C., who is secretary of the Intermediate Rate Association.

I next want to have incorporated in the record the following telegrams, which I will read:

INDIANAPOLIS, March 12, 1918.

J. F. SHAUGHNESSY,

*President Intermediate Rate Association,
401 Colorado Building, Washington, D. C.:*

You are hereby authorized to enter the appearance of the Public Service Commission of Indiana in the hearings before the Senate and House committees, and we may be able to appear in person in the hearings of the proposed amending of interstate-commerce act.

CARL S. MOTTE,
Secretary, Public Service Commission of Indiana.

The next is from Helena, Mont., dated March 12, 1918:

J. F. SHAUGHNESSY,

*President Intermediate Rate Association,
Washington, D. C.:*

Your wire. We wrote March 9. A letter with local data follows. Please enter our appearance.

MONTANA RAILROAD COMMISSION.

The next is as follows:

LEWISTON, MONT., March —, 1918

J. F. SHAUGHNESSY,

*President Intermediate Rate Association,
Washington, D. C.:*

Represent us as party of record.

CHAMBER OF COMMERCE, LEWISTON, MONT.

The next is telegram from Butte, Mont., as follows:

BUTTE, MONT., March 13, 1918.

J. F. SHAUGHNESSY,

*President Intermediate Rate Association,
Washington, D. C.:*

Acknowledging your wire even date, will be pleased to have you represent us in passage of bill 313, and this will be your authority to enter us as parties of record.

BUTTE CHAMBER OF COMMERCE.

Next is as follows:

OKLAHOMA CITY, March 12, 1918.

J. F. SHAUGHNESSY,

*President Intermediate Rate Association,
Washington, D. C.:*

Your wire 11th. Not familiar with long-and-short-haul bills. Please mail copies quick.

OKLAHOMA TRAFFIC ASSOCIATION.

The next is as follows:

FORT WORTH, TEX., March 12, 1918.

J. F. SHAUGHNESSY,

*President Intermediate Rate Association,
Washington, D. C.:*

Your communication to chamber of commerce referred to this organization. Enter us as parties of record.

FORT WORTH FREIGHT TRAFFIC BUREAU,
By E. D. BYERS.

The next is as follows:

SANTA FE, N. MEX., *March 12, 1918.*

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

Your wire 11th. We are in full sympathy with the purposes of your association, although will be impossible for this commission to have personal representative at hearing. Please enter our appearance for support proposed legislation.

STATE RAILROAD COMMISSION OF NEW MEXICO.

The next is as follows:

SALT LAKE CITY, UTAH.

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

You are hereby authorized to enter the Public Utilities Commission of Utah as party of record in hearings on long-and-short-haul bill before bills before Senate committee and House committee on dates named for such hearings.

PUBLIC UTILITIES COMMISSION OF UTAH.

The next one is as follows:

RENO, NEV., *March 11, 1918.*

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

We authorize you to represent us at the long-and-short-haul hearings before Senate committee. Please emphasize that is the fight by coast terminal shippers for special privileges and nothing else. Commission will always allow roads raise remunerative rates, as is shown by its last order, but this can be done without discrimination asked by opponents of the bill. Railroads are wholly allied with the heaviest shippers, which is natural but unjust. Intention roads to favor coast shippers as further shown by comparison of rates from Reno to Nevada points with coast rates to those points. We learn that Seth Mann has left for Washington to represent San Francisco Chamber of Commerce, as usual. As evidence that coast demands special privileges, read exceptionally strong cross-examination of Mr. Mann by Senator Cummins at San Francisco, where Mr. Mann admitted that Government had right to regulate water competition so that roads might get their share of the freight, but stated that Government should not exercise it, so that coast cities were entitled to water competition at lowest possible rates and to the lowest possible rail rates as well. What does this mean but that intermediate points should be taxed for the benefit of coast terminals? If that is not seeking special privileges, what is it?

RENO COMMERCIAL CLUB.

Mr. MANN. What commercial club?

Mr. SHAUGHNESSY. Reno Commercial Club, an old friend of yours, Mr. Mann.

The next is as follows:

GREENSBORO, N. C., *March 13, 1918.*

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

Please enter Greensboro Chamber of Commerce appearances indorsing both House and Senate bills regarding long and short haul.

GARLAND DANIELS,
Secretary Greensboro Chamber of Commerce.

The next is as follows:

COLUMBIA, S. C.

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

Your wire 11. The South Carolina Railroad Commission will be unable to have representative present at hearing March 13 and 25. However, please enter name this commission as party of record.

JOHN G. RICHARDS, *Chairman.*

The next is as follows:

GREENVILLE, S. C.

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

Yours 12. Regret impossible to have representative present. We authorize you to enter our name.

GREENVILLE CHAMBER OF COMMERCE.

The next is a letter from the Columbia Chamber of Commerce, Columbia, S. C., as follows:

COLUMBIA, S. C., March 13, 1918.

Mr. CHARLES W. SMITH,
Secretary Intermediate Rate Association,
Washington, D. C.

DEAR SIR: Your letter March 9, with inclosures, has had my thoughtful attention. I am in full accord with the purposes of House bill 9923, and shall endeavor to impress upon our Representatives the importance of favorable action on it.

In regard to Calendar No. 225, expressing minority views, through Mr. Poindexter, I am not quite sure that I favor the position he takes. In the first place, I would rather trust the President for a square deal than the Interstate Commerce Commission, for, due to its hocus-pocus construction of the fourth section, we have the present discriminatory conditions. I believe from quite an extensive experience before the Interstate Commerce Commission, that it holds the section fundamentally wrong, and certainly has demonstrated in its decisions that the principle should be qualified to the extreme limit. It has put its seal of approval upon the principle that railroads may not only meet water competition, but destroy it, and in the destruction may recoup their losses by higher rate levies on intermediate nonwater points. I have not much faith in a regulating body that will sanction, as the Interstate Commerce Commission has, a system of rate making as unscientific and unresponsive to commerce as the one obtaining at present, and for these basic reasons am opposed to the placing in its hands the supervision mentioned by Mr. Poindexter. On the other matters he speaks of, I am in accord.

Yours, truly,

J. A. T. SLATER,
Secretary and Traffic Manager.

Mr. SHAUGHNESSY. I desire to refer to the testimony which I put on formally before the Newlands committee in re joint resolution No. 25, in Washington, D. C., on December 15, 1917, pages 2252 to 2300. I ask that it be made testimony of record in this hearing. (The matter referred to is here printed in full, as follows:)

JOHN F. SHAUGHNESSY.

BEFORE THE JOINT COMMITTEE ON INTERSTATE AND FOREIGN
COMMERCE.

The CHAIRMAN. Will you give your name and vocation, please?

Mr. SHAUGHNESSY. John F. Shaughnessy, member of the Nevada Railroad Commission.

The CHAIRMAN. Your residence?

Mr. SHAUGHNESSY. Carson City. Mr. Chairman, I wish to be heard on the long-and-short-haul question, as we understand it in our territory, and also the railway question in general.

In opening, I desire to read Nevada Senate joint and concurrent resolution No. 10, passed by the Nevada Legislature March 13, 1917, unless it be that you gentlemen would not care to hear it and would prefer to have it filed, because copies have heretofore been officially served on the Members of Congress.

The CHAIRMAN. Just briefly state its contents and file it.

Mr. SHAUGHNESSY. Among other things it authorizes the Nevada Railroad Commission to bring the matter of an absolute long-and-short-haul amendment to section 4 of the act to regulate commerce before Congress in such manner as will most effectively support and promote its passage. The resolution reads as follows:

Relative to the amendment to section 4 of the Federal act to regulate commerce, and petitioning the President of the United States and our Representatives in Congress to take such action as will provide in said amendment for an absolute long-and-short-haul provision eliminating the grossly unjust and discriminatory back-haul charges which are assessed against the people of Nevada on both east and west bound transcontinental freight traffic.

Whereas the people of the State of Nevada have suffered, and are suffering, under a most unjust and oppressive discrimination arising from the imposition of a system of infamous differentials or back-haul charges in freight rates on both east and west bound transcontinental freight traffic, assessed against Nevada points through the medium of the transcontinental freight bureau of Chicago, Ill., the membership of which is made up of all interstate railways which participate in said transcontinental business; and

Whereas said differentials, or back-haul charges, when defined, amount to the charging of a higher rate upon freight traffic between all Nevada points and all points of origin or destination in eastern defined territory than is charged to or from the longer distant Pacific coast terminal points, or, conversely stated, the charging of a lower rate on said traffic to and from said farther distant Pacific coast terminal points than is charged to and from said shorter distant Nevada points; and

Whereas said discriminatory and preferential system of charging is defended upon the theory that the same is forced and compelled because of the presence of water competition at San Francisco, Los Angeles, and other Pacific coast terminal points or ports of call; and

Whereas with rare exceptions said ocean-going traffic has never amounted to more than 10 per cent of the all-rail transcontinental traffic moving to and from the said Pacific coast terminals; and

Whereas since the slides in the Panama Canal in 1915 and the European war, there has never been any ocean-going competition, nor is there any today; and

Whereas, in exemplification of the arbitrary and unjust character of said discrimination imposed against the people of Nevada and other intermountain territory, embracing all of that great country lying between a line running north and south from Canada to Mexico through Denver, and another north and south line immediately east of Seattle, Portland, San Francisco, Los Angeles, and San Diego, let it be stated that the final carriers reaching said Pacific coast terminals or ports of call absorb said entire differentials or back-haul charges assessed against our people, notwithstanding the self-evident fact that if said water competition were truly forceful and compelling, as alleged, the connecting carriers east of Ogden, El Paso, and St. Paul would be as vitally concerned and insistent upon a participation in said higher charges for said shorter hauls as are the final carriers; and

This means, taking the rate of \$17 per ton on printing paper from New York to San Francisco as fairly representative that the Union Pacific Railroad for its 1,000 mile haul between Omaha and Ogden would, roughly speaking, receive approximately \$6 as its division of said \$17 through rate, and the Southern Pacific Co., the final carrier, for its haul of 785 miles from Ogden to San Francisco, would receive as its division, approximately \$5 per ton; but if the shipment is from New York to Reno the charge is \$22 per ton, and while the division to the Union Pacific is confined to its proportion, of the \$17 through rate to San Francisco (namely, \$6 per ton), the Southern Pacific Co. would, in addition to its \$5 division of said through rate to San Francisco, also absorb entirely the long and short haul arbitrary of \$5, the difference between the \$17 and \$22 per ton rates charged respectively to San Francisco and Reno.

Whereas, as further indicating that said water competition is not a compelling consideration, let it be emphasized that there have never been any differentials or back-haul charges assessed against the people of eastern interior territory (Indiana, Ohio, etc.) tributary to the Atlantic coast, on eastbound transcontinental traffic from Pacific coast terminals or interior points tributary thereto. On the contrary, while these arbitraries are not assessed against eastbound traffic to the same extent as on west-bound, yet whenever levied against said eastbound traffic, as in the case of wool shipments, the Nevada wool producer pays said back-haul charge and the originating carrier absorbs it; and

Whereas said system of back-haul charging never was, and is not now, predicated upon any principle of justice or fair dealing to the people of said intermountain territory, from which it follows that this theory or basis of rate making will not stand the test of a fair analysis; and

Whereas the effect of said lower charges for the longer haul to and from said more distant points results in building up great industrial and commercial enterprises, and in centralizing and enlarging the population at said Pacific coast terminal points, a substantial proportion of which is at the expense of Nevada and other intermountain States; and

Whereas the effect of said higher charges for the shorter haul to and from said less-distant points results in retarding the growth and development of Nevada's industrial and commercial prosperity, and in restricting the State's growth in population and wealth; and

Whereas the Railroad Commission of Nevada in 1908 brought a proceeding before the Interstate Commerce Commission and did then, and has ever since, been contending in numerous hearings which have been held, that these arbitrary back-haul charges should be entirely removed on westbound transcontinental traffic; and

Whereas when said proceeding was brought in 1908, the average back-haul charge assessed against Nevada points amounted to rates approximately 75 per cent higher than those charged on similar traffic passing through Nevada to San Francisco and Los Angeles; and

Whereas since that time said railroad commission of Nevada has been successful in securing reductions in class and commodity rates from all eastern defined territory, which have had the effect of reducing said differentials or back-haul charges to approximately 25 per cent, as compared with 75 per cent when the case was started in 1908; and

Whereas the railroad commission has conclusively shown throughout the trial of these cases, that the lower rates charged to said Pacific coast terminals on said west-bound traffic was in every way compensatory when considered upon the basis of the cost of moving said traffic in train-load lots without the necessity of breaking bulk in transit during the long haul across the continent; and

Whereas further, the people of Nevada have through their railroad commission contended, and do now contend, that said rates covering the movement of westbound transcontinental traffic to Pacific coast terminals are fully compensatory; the evidence upon this point being conclusive and having never been refuted by the railroads, it follows that the removal of said back-haul charges, and the application of rates no higher to Nevada points than to Pacific coast terminals, would be equally, or in fact more compensatory, than to said further distant points; and

Whereas the carriers have from the outset, and do now, elect to stand upon the mere question of the presence of water competition at Pacific coast terminals as fully justifying the charging of said lower preferential rates at said Pacific coast terminals and the higher discriminatory rates at Nevada points, and this without regard to the relationship existing between the revenue received and the cost of rendering said service, or any other consideration and

Whereas said Interstate Commerce Commission has, in Nevada Railroad Commission v. Southern Pacific Company (19 I. C. C., 238), June 22, 1911, stated: "The carriers herein involved have not shown that undue discrimination was not effected by their rate reductions between points in Nevada and points in California, nor have they established that the rates to the Pacific coast cities, if extended by them from eastern points outside the zone of water influence, are not fully compensatory;" and

Whereas the Interstate Commerce Commission has, in its decision of June 5, 1916, in the matter of fourth-section applications Nos. 205, et al., said: "The result of all the evidence offered was to show that there is not at this time any effective water competition between the two coasts, and that there is little likelihood of any material competition by water during the present calendar year, irrespective of the action the commission may take with respect to these petitions. * * * The war and the unparalleled rise in prices of ocean transportation have so changed the situation as to transfer a relation of rates that was justified when established, to one that is now unjustly discriminatory against intermountain points;" and

Whereas notwithstanding the indisputable character of the evidence submitted by Nevada through its railroad commission and said findings above quoted, the Interstate Commerce Commission has thus far failed to remove in their entirety said arbitrary differentials or back-haul charges assessed against Nevada; and

Whereas during the year 1916 the entire question covering said differentials on west bound freight traffic was, upon further application of the Nevada Railroad Commission for the complete removal of said back-haul charges, again reopened and reheard by the Interstate Commerce Commission and is now submitted for decision; and

Whereas if said back-haul charges are removed by order of said commission the Pacific coast jobbing interests and the carriers who profit by the perpetuation of said system of charging may contest said order in the Federal courts on the ground of informality, irregularity in proceedings, or otherwise, thus resulting in unreasonable and unnecessary delay: Therefore be it

Resolved by the senate, the assembly concurring, That the President of the United States and the Senators representing Nevada, and the Nevada Representative in Congress be, and they are hereby, requested to work for the passage and vote for an amendment to section 4 of the act to regulate commerce, providing that it shall be unlawful for any common carrier subject to the provisions of said act to charge or receive any greater compensation in the aggregate for the transportation of freight and passengers for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of said act to charge or receive as great compensation for a shorter as for a longer distance; and be it further

Resolved, That Congress be, and it is hereby, memorialized and requested to provide for and pass said amendment; and be it further

Resolved, That copies of this resolution be forwarded to each Senator and Representative in Congress: and it is further

Resolved, That the Railroad Commission of Nevada be, and it is hereby, authorized to cooperate with the railroad commissions and commercial organizations of all other intermountain States hereinbefore defined, in bringing this matter to the attention of Congress when said amendment is under consideration, in such manner as will most effectively support and promote its passage.

Adopted in senate, March 13, 1917.

MAURICE J. SULLIVAN,
President of the Senate.
R. A. MCKAY,
Secretary of the Senate.

Adopted in assembly, March 13, 1917.

BEN. D. LUCE,
Speaker of the Assembly.
H. W. EDWARDS,
Chief Clerk of the Assembly.

Approved March 15, 1917.

EMMET D. BOYLE, *Governor.*

Since the passage of this resolution the Interstate Commerce Commission, on June 30, 1917, after finding that "There is no existing competition necessitated by reason of water service between the two coasts (Atlantic and Pacific) which warrants the rail carriers in maintaining, under present circumstances, lower rates to the Pacific coast than are normal and reasonable or lower than to intermediate points," made an order to become effective October 15, 1917, removing all discrimination against intermountain territory existing in transcontinental rates. In other words, the orders heretofore issued by the commission granting relief to the carriers from the fourth section of the act to regulate commerce were vacated and the carriers ordered to conform their rates to the absolute long-and-short-haul provision of section 4. Thereafter, because of the passage of an amendment to section 15 of the act to regulate commerce, requiring all carriers to secure the approval of the commission before filing any increased rates, and because the carriers had undertaken to comply with said order of June 30 by increasing Pacific coast terminal rates in part, and by reducing intermountain rates in part in order to bring all westbound transcontinental rates to a common level, the commission, on September 28, issued an order suspending the effective date of said order of June 30 indefinitely. All intermountain rate cases, therefore, were reopened and set down for

further hearing at New York, November 5; Chicago, November 12; and Portland, Oreg., November 20. Further than this we are not advised at the present time, December 15, 1917.

The fourth section of the act to regulate commerce, as amended June 18, 1910, reads as follows:

That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route, than the aggregate of the intermediate rates subject to the provisions of this act; but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may, in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

Whenever a carrier by railroad shall in competition with a water route or routes, reduce rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

The position of the carriers and the interpretation which they have contended should be placed upon this section, in response to their applications for authority to meet water and rail competition, is clearly and forcefully set forth by the following rules which they formulated and put in evidence before the Interstate Commerce Commission in the rehearing of fourth section applications Nos. 205, et al., decided as aforesaid on June 30, 1917:

Rule 1.—Carriers shall be required to show—

(a) That proposed rates to or from more distant points are necessitated by conditions which have not been created by the applicant carrier, are less than reasonable, and are subnormal.

(b) That such rates yield revenue in excess of the actual cost of handling the traffic upon which they are to apply, thereby adding something to the net revenue and avoiding any increased burden upon intermediate points.

Rule 2.—Relief shall be granted the carriers to meet not only actual sea competition, but also potential competition which has been previously manifested, and the facilities for which are still in existence, although dormant at the time of the application or the hearing thereon.

Rule 3.—The actual movement of a commodity by water shall determine whether it is susceptible to sea competition.

Rule 4.—Rates between Atlantic or Gulf ports to the Pacific ports shall be authorized which are the practical equivalent of the rates by sea, taking into account the relative cost and disparities, i. e., accomplishing a fair equalization of the rates, the rates at intermediate points to be considered separately and without relation to the terminal adjustment.

Rule 5.—Rates between interior points of origin and eastern defined territory and Pacific coast terminals shall be whatever shall be determined necessary to enable carriers to obtain and hold a fair proportion of the traffic, taking into consideration—

(a) The rates from principal points of origin via sea routes to destination ports.

(b) The additional changes incident to water transportation.

(c) A fair allowance for the intangible difference, if any, due to superior service.

(d) Competition of carriers from other points of origin, the rates at intermediate points to be considered separately without relation to the terminal adjustment.

Rule 6.—When the carriers shall have fully supported their fourth section applications as contemplated by the preceding rules, the commission shall exercise the authority delegated by the fourth section to authorize the carriers to charge less for

longer than for shorter distances, and from time to time prescribe the extent to which such common carrier may be relieved, by considering what rates in fact are justified and fixing in the determination of all applications the specific rates which shall be authorized to meet water competition without affecting rates at intermediate points, except that the carriers shall not be permitted to exceed the combination of the authorized rate to the port plus full local rate thence to interior destination.

Except as to rule 2, and subject to certain qualifications as to the others, the Interstate Commerce Commission gives approval to these rules in the following language:

Paragraphs (A) and (B) of rule 1 are in accord with principles stated and applied by us in "Fourth Section Violations in the Southeast" (30 I. C. C. 153).

Rule 2 is of more doubtful character as a principle of action. A water service which for one cause or another has been abandoned may have been effective at some period in the past in reducing rail rates to a level lower than they otherwise would have been, but there may not be at present any likelihood of the restoration of that service, although some of the facilities for the service are still in existence. The maintenance of lower rates under these circumstances to the more distant than to intermediate points may not be justified, although the lower rate when established was necessitated by the competition then existing and the higher rates to intermediate points are not unreasonable. There are so many varying circumstances which apply to situations of this kind that we are unable to subscribe to rule 2 as a fixed rule of action.

We can see no reason to object to rule 3 or to rule 4, except in so far as rule 4 requires the separate consideration of intermediate and terminal rates. The business of a carrier can not usually be so separated into two parts. While it is obviously unfair to adopt a rate made to a competitive point, reduced below a reasonable basis by necessity, as the standard by which to measure rates to points where such necessity does not exist, it is not unfair to regard both rates to intermediate and depressed rate points together as parts of one system of rates.

A similar qualification, to wit, that rates to and from intermediate points may be reasonably adjusted as between these points and water competitive points should be applied to paragraph (d) of rule 5, and the concluding phrases of rule 6; in other words, we construe it to be our duty in acting under that clause of the fourth section which permits us from time to time to prescribe the extent to which such common carriers may be relieved, to weigh the claims made as to the necessity for the lower rate at the more distant point and to determine whether the rates so necessitated is in fact substantially lower than is reasonable under the transportation condition existing. The rates to intermediate points must also be scanned at the same time to determine whether or not they are higher than the rates on the same or other similarly situated lines for like distances. It will not be possible always to reach an adjustment as to the exact measure of the rates that should be applied to intermediate points, but it is possible to put such reasonable limitations upon these rates that, considering the terminal and intermediate rates together, glaring discrepancies will be avoided and all apparently undue discriminations will be prevented. This has been our conception of our power and duty under the law, and we have endeavored to act accordingly in our previous reports concerning these transcontinental rates in so far as the records furnished a basis. (*Nevada Railroad Commission v. S. P. Co.*, 21 I. C. C., 329; *City of Spokane v. N. P. Co.*, 21 I. C. C., 400; *Commodity rates to Pacific Terminals*, supra; *Rates on Asphaltum, Barley, Beans, and Canned Goods*, 33 I. C. C., 480.)

Here, gentlemen, the commission has validated the carrier's proposals to meet water or rail competition at out-of-pocket cost rates to and from the long-haul competition points, and that the actual movement of any commodity by water, without regard to the volume of its movement which may be greater at interior points than at water points, shall authorize the carriers to establish rates the practical equivalent of the water rates without at the same time affecting the rates at the short-haul points; also while the commission states that the higher intermediate rates will be "scanned" yet it will not be unfair to regard both the said long-and-short-haul charges as one system of rates. If I understand the matter correctly, this affords complete relief from the operation of the law whenever and wherever water competition is found.

Also, it means the complete control by the rail carriers of water competition on the one hand, and on the other placing the cost of its control or elimination upon the short-haul shippers and consumers. Likewise, that the perpetuation of long-and-short-haul rates occasioned by long-line carriers meeting the short-line rates at large industrial and commercial centers over circuitous routes, will be maintained and made possible at the expense of the short-haul shippers and consumers.

Now the evidence offered in the Intermountain Rate cases on behalf of the Pacific and Atlantic coast commercial and industrial interests, supported the contentions of the carriers, except that certain witnesses expressed opinions that some of the Pacific coast terminal rates were reasonable in and of themselves, and should not be increased, but both Pacific and Atlantic coast interests opposed any substantial increase in the rates to the Pacific coast. They urge that rates to the Pacific coast ports should be maintained with a certain degree of stability, in order that they may be able to forecast the future of business conditions, and that the basis of the rates so maintained may rest upon the usual normal conditions affecting these rates, and not upon abnormal and extraordinary conditions created by the war. Practically all of these shippers urged the maintenance of blanket rates from eastern defined territory to the Pacific coast, upon the ground that the parity of rates heretofore maintained from all the great territory lying east of the Missouri River to the Atlantic coast, has afforded manufacturers in this territory equal opportunity to market their products on the Pacific coast, and has also afforded the coast cities the benefit of a wide market and a competition in prices resulting therefrom.

At this point it is interesting to note that the importance of the market and the development of the great intermountain inland empire was entirely overlooked in the plea of these interests for a wider market and competition in prices. In this connection let it be said that the great intermountain and the central and eastern California, Washington, and Oregon country, comprising all that area between a line drawn north and south through Denver from the Canadian to the Mexican line, and one a few miles inland from Pacific coast ports, is now known as back-haul territory. In 1910 this territory had a population of 5,361,590, compared with which the Pacific coast terminals had a combined population of 1,898,638. Unfortunately, there are no official figures available as to the total westbound rail tonnage reaching this back-haul territory and the Pacific coast terminals, but I heard it estimated by a prominent traffic manager in Washington early in 1916 that the total rail tonnage reaching said Pacific coast terminals is not less than 7,000,000 tons a year; compared with which the average annual water tonnage from Atlantic coast to Pacific coast ports and Hawaii for the five-year period ending in June, 1916, was 492,000 tons, or 7.03 per cent of the all-rail tonnage. Included in this average was the abnormally large tonnage of 951,000 tons which moved by water the year following the opening of the Panama Canal, in 1914. Only a comparatively small part of said 7,000,000 tons of freight originated on the Atlantic coast, and therefore was not subject to water competition. As shown by the Interstate Commerce Commission for the year 1913 (32 I. C. C., 616), the total tonnage of commodities said to

be subject to water competition which moved from Atlantic Coast and Pittsburgh territory to the Pacific coast was 961,768 tons. of which 422,359 tons. or 44 per cent, moved by water, and 539,409 tons. or 56 per cent, moved by rail.

Although the eastbound ocean-going traffic from the Pacific coast and Hawaii to the Atlantic coast prior to the war was heavier than the westbound traffic, no attempt has been made to apply long-and-short-haul carload rates to the consumers of Indiana, Ohio, Pennsylvania, New York, or other interior States compared with Atlantic coast terminal points on eastbound transcontinental rail traffic. On the contrary, practically all products of the soil, forest, and mines are moved east on blanket rates, beginning at Denver and extending clear across the country to and including the Atlantic coast terminals. This is explained by the carriers, stating they wished to favor the movement of products of the soil to all eastern territory at practically uniform rates in order to afford the widest market possible therefor.

On wool traffic, however, moving clear across the country to Boston, Mass., long-and-short-haul rates are assessed against the Nevada wool producer as follows: The rate from San Francisco to Boston is \$20 per ton, whereas from Winnemucca, Nev., it is \$38.80 per ton.

Now, surely the foregoing ratio of 7.03 per cent of the westbound transcontinental traffic can not be said to be an abnormal or unreasonable proportion of the traffic to be allotted to the water carriers. Also can it be fairly said that this competition was so forceful as to justify making the entire country a "special case," and in pursuance thereof the maintenance of long-and-short-haul rates to intermountain points from all territory east of the Missouri River? In this connection let me emphasize that since early in 1915 the American-Hawaiian Steamship Co. and the Luckenbach Steamship Co. have, on two different occasions, appeared before the Interstate Commerce Commission in the Intermountain Rate cases and protested against the carriers' applications to continue the present low rates to Pacific coast terminals under the guise of meeting water competition. In this connection their position, if I understand it correctly, has been and is that there is only a relative amount of water competitive traffic which they can regularly secure, and that therefore it is their desire that the relationship of rates maintained by the carriers and the water lines in the past might reasonably be increased to a somewhat higher level.

In leaving the domestic service to enter the European and South American trade, at rates from 3 to 10 times higher than the domestic rates, the traffic managers of said American-Hawaiian and Luckenbach Steamship companies notified the Interstate Commerce Commission that they would ultimately return to the coast-to-coast trade, but that the period within which they would return would depend largely upon the compensatory character of the rates that they might be able to secure in competition with the transcontinental rail carriers.

At the present time, therefore, there is no water competition between the two coasts, nor has there been any companies operating a regular service since early in 1916. In this connection the testimony of the traffic managers of the American-Hawaiian and Luckenbach Steamship companies was to the effect that after the war closed there

would be sufficient business in furnishing materials and supplies for the rehabilitation of Europe, to keep all boats regularly and profitably employed for from three to five years. In view of the demand for ships for use in the prosecution of the war, and the world-wide shortage of ocean-going steamships due to the exceedingly large number which have been and will continue to be destroyed throughout the war, the aforesaid estimate of from three to five years profitable business in the European trade after the war closes, seems to be entirely conservative.

Commenting on the long-and-short-haul system of rate making as applied to the intermountain territory the Interstate Commerce Commission, in its decision of June 30, 1917, said:

We are of the opinion that the best interests of the public, of the transcontinental carriers, and these intermountain cities in particular, will be served by a policy that permits the transcontinental carriers to share with the water lines in the traffic to and from Pacific coast ports. * * * The shippers at the coast are thereby given the benefit of competing rates and competing markets of supply. The railroads are enabled to fill up their trains with traffic, which, though not highly profitable, yields a revenue greater than the "out-of-pocket" cost of securing and handling the traffic, thereby adding to the net revenue of the carriers, and to that extent lightening the transportation burdens borne by other localities.

While such a policy is doubtless beneficial to the railroads in eliminating water competition, and to the Pacific coast industrial and commercial interests in the broadening of purchasing markets and prices and distributing territory, the fact that it is not beneficial to the intermountain territory, is strongly evidenced in the following paragraph of the commission's finding:

It is perfectly clear that the Pacific coast cities have always paid lower transportation rates than they would have paid were it not for the facilities they have enjoyed for bringing manufactured articles from eastern manufacturing districts and for sending east the products of the coast States by water. It is also clear that the intermountain section of the country has paid and now pays rates for the transportation of these manufactured articles which are higher proportionately than is paid by the coast cities, and probably higher than it would be necessary to maintain, if the rates to the coast cities could be maintained at a level more nearly proportionate to the service given.

We ask why should not the shippers and consumers of the great intermountain territory be accorded the equal benefit of the competing markets and prices of all eastern defined territory at rates that are uniform instead of the high short-haul rates referred to by the commission? This, gentlemen, has been our plea before the Interstate Commerce Commission for the past 10 years, and we now renew it before this honorable committee with the request that you have enacted legislation which will forever remove and prevent rate adjustments of this nature.

If, as some would have us believe, the Pacific coast terminals enjoy a natural advantage by reason of their location upon the sea, why do we find the industrial and commercial agencies thereof solidly lined up behind the transcontinental carriers in the fixing of rates which have the effect of putting the ocean carriers out of business?

From my experience in the intermountain rate cases, I am unable to escape the conclusion that the Pacific coast and Atlantic coast industrial and commercial interests feel that in so far as possible the great interior section of the country is legitimate prey for exploitation, and that this result, which amounts to the centralization of the

industrial and commercial activities and population on the respective seaboard lines, can best be accomplished by cooperation with the railroads in the promotion of long-haul traffic. In fact, double hauls on the raw products in and the finished products out from Atlantic coast territory and similarly long cross-country hauls to Pacific coast ports for storage and back-haul jobbing inland from Pacific coast territory.

Therefore, in practically all Nation-wide rate inquiries during the past these communities have been found lined up on the side of the railroads. Perhaps not always openly, but understandingly. For these reasons the great producing and yet largely undeveloped interior country which makes possible these densely populated centers will doubtless continue in the future as in the past to bear the burden of the opposition of these sectional interests to the establishment of nondiscriminatory rates to interior points. Also the burden of their support to carrier's applications for rate increases from time to time, which relatively will bear much more heavily on the higher rates within the interior country than upon said lower long-haul rates in which these communities are chiefly concerned.

THE SOUTHEASTERN LONG AND SHORT HAUL CASES.

Illustrating what is said above, and in further support of our contention for an absolute long and short haul provision, and as evidence that the present fourth-section provision, as understood and administered, is in contravention of a wise national policy, it will be necessary to review at some length the "Southeastern cases" (30 I. C. C., 153), decided April 13, 1914, and the "Shreveport case" (23 I. C. C., 31, and 234 U. S., 342), decided June 8, 1914. Around these cases is centered the railroad's fight at the present time for the centralization of all power of control and regulation of railroads in the Interstate Commerce Commission, to the exclusion of the various State constitutions, legislatures, commissions, and courts.

At the time of its investigation in the Southeastern cases during 1912 the commission, among other things, found that "there were no regular boat lines in operation from Ohio and Mississippi River points to New Orleans," and "that there had not been any for a number of years prior thereto, although there was testimony to show that each year during high water a considerable tonnage of coal, iron, and steel articles came down the Ohio and Mississippi Rivers from Pittsburgh to New Orleans."

Formerly, from 1815, subject to interruptions by the Civil War between the years 1861-1865, regular water transportation service was rendered on the Ohio and Mississippi Rivers until about 1898. The decline in the water traffic on the Mississippi River between St. Louis and New Orleans, is illustrated by the table at page 227 of the opinion, which shows that the water tonnage in 1889 was 844,000 tons, whereas in 1908 it had fallen to 88,500 tons. In the maintenance of lower rates from Chicago, Cairo, Cincinnati, Louisville, and St. Louis to Vicksburg, Natchez, Baton Rouge, New Orleans, Mobile, Pensacola, and Tampa, than to intermediate rail points, the commission justified this action in the following language:

It is evident that the rates and facilities afforded by the rail lines have had the effect of eventually attracting to these lines nearly all of the long-distance

traffic between Ohio River points, upper Mississippi River points, and Missouri River points, on the one hand, and New Orleans, on the other. There is no reason for believing that the rates to New Orleans when established by the rail lines in 1887 and since maintained were not necessitated by an active compelling water competition. Without doubt, the changing demands of commerce, the increased facilities of the railroads, their better organization and regularity of service, have been influential in winning for them not only a share of the traffic, but nearly all of the traffic. *The water competition, once actual and compelling*, is still, however, potential, and it is most earnestly contended by the petitioners herein that any substantial increase in the rates to New Orleans will have the effect of reestablishing water competition, with the subsequent loss of traffic and revenue to the rail lines. It is represented that having secured this traffic through years of struggle, there is nothing in the fourth section of the act to regulate commerce, as amended in 1910, that puts upon the rail carriers an obligation to establish rates which will restore to the boat lines the traffic they have lost.

Here, gentlemen, is a situation throughout the Southern States, that is closely analogous to the intermountain rate condition. The same system of back-haul charges or arbitraries are added to the through rates from New Orleans and the aforesaid Mississippi River points north of New Orleans, and Mobile, Pensacola, and Tampa, to make the higher short-haul rates at intermediate points within the Southern States, that have in the past been added to the Pacific coast terminal rates, to make rates at intermountain points throughout the intermountain territory. Here we have the statement of the Interstate Commerce Commission that it will perpetuate the discrimination against intermediate points in the Southern States, but not because of real compelling competition. Quite the contrary. The river transportation lines had long since found the railway competition too severe and retired; therefore the long and short haul rates were justified on the potential competition due to the existence of the Ohio and Mississippi Rivers, and the apprehension that if the rates were readjusted, the water carriers might reenter the service and regain some of the business which the rail carriers had taken away from them by the maintenance of the discriminatory long and short haul rates in question. This case is illustrative of others that might be cited from the reported decisions of the Interstate Commerce Commission where effective water competition has been eliminated, but because of potential competition due to the existence and the availability of rivers, lakes and oceans, discriminatory long-and-short-haul rates have, upon application of the carriers for fourth section relief, been treated by the commission as "special cases," and their continued application authorized. Thus, for many years, in fact, since the Interstate Commerce Commission was created in 1887, we find a legislative branch of our Government, and also the courts, in construing the policy outlined by Congress in the act to regulate commerce, validating rate schemes designed in the interest of the highest railway development. Unfortunately, however, the policy authorized and administered under the fourth section of the act to regulate commerce, since its inception in 1887, has been at the sacrifice of the water carriers and wise national waterway development, while at the same time placing the cost of maintaining artificial rate adjustments, designed in most cases for the ultimate elimination of water competition, upon the shippers and consumers at interior points, removed from our natural waterways.

THE TEXAS SITUATION.

Now, let us observe the far-reaching effect of this unwise national policy by reviewing the Texas situation. The railway regulations enforced by the Texas Railroad Commission since its creation in 1891 are more bitterly complained of by the carriers than any others throughout the country. However, as will clearly appear, the underlying and justifying reason for the exercise of this State's sovereign power for the protection of its people and commerce was made imperative because of the railroad's long-continued practice of maintaining long and short haul rates against Texas on interstate traffic.

In connection with the Southeastern cases it is to be said that at Shreveport, La., because of its location on the Red River, about 20 miles east of the Texas line, and because of her proximity to the Mississippi River through Vicksburg, Miss., the preferential benefits of long and short haul rates on interstate traffic from all northern and eastern defined territory, formerly granted by the carriers, were not disturbed. Thus, Shreveport enjoys carload rates from all northern and eastern defined territory, much lower in fact than the rates from such territories to points in Texas for equivalent or shorter distances by direct rail lines which do not touch Shreveport at all.

Manifestly, some action was necessary to offset this differential. Otherwise it would give Shreveport the advantage of warehousing northern and eastern freight which could thereafter be shipped to various points in Texas at rates less than it would be possible for commercial jobbers at Dallas, Fort Worth, and other Texas points to bring freight in and warehouse it, and thereafter reship to interior Texas points at local rates in competition with Shreveport.

Facing this condition of affairs, the Railroad Commission of Texas in the early nineties prescribed its Texas freight classification and a schedule of local class and commodity rates which offset the unnatural advantages against Texas jobbers and shippers due to the afore-said preferential long and short haul basing rates applied at Shreveport on all traffic inbound to Texas from northern and eastern territory. For approximately 20 years the carriers published and observed these Texas rates.

On March 8, 1911, the Railroad Commission of Louisiana, on behalf of various merchants, manufacturers, jobbers, and others residing at Shreveport, brought a proceeding before the Interstate Commerce Commission complaining that rates between Shreveport and Texas points were unjust, unreasonable, and discriminatory when compared with Texas rates. The Railroad Commission of Texas was not made a party to this proceeding. On March 11, 1912, the Interstate Commerce Commission made its decision reducing the class rates from Shreveport to specified points in Texas east of Dallas and north of Houston to the level of the class rates prescribed by the Texas Commission. In addition thereto, the lines serving this territory were ordered to cease and desist from charging higher rates upon any commodity from Shreveport into Texas than were contemporaneously charged for the carriage of such commodities from Dallas and Houston toward Shreveport for an equal distance. This decision was appealed by the carriers to the then existing Commerce Court, where, on April 29, 1913, the order was upheld. And on

appeal by the same carriers to the Supreme Court of the United States, the decisions of the Interstate Commerce Commission and the Commerce Court were upheld by the Supreme Court on June 8, 1914. (*Houston East and West Texas Ry. v. United States*, 234 U. S., 342.) Following the Supreme Court decision, the carriers, on August 1, 1914, complied with this decision by putting into effect the "Western freight classification" in lieu of the "Texas classification," and also reduced the class rates as ordered; but, in removing the discrimination in commodity rates, the order was complied with by increasing the rates within the State of Texas to the level of the rates out of Shreveport. This had the effect of very substantially increasing the commodity rates covering the movement of traffic wholly within Texas from Dallas east and Houston north.

On or about this time a supplemental petition was filed with the Interstate Commerce Commission by the Railroad Commission of Louisiana, requesting that the same rate structure as prescribed in the aforesaid order be applied to all carriers, in the transportation of all carload and less than carload traffic in all territory lying east of a line drawn through Gainesville, Fort Worth, Waco, and thence along the Brazos River to the Gulf of Mexico. Said rates to apply to traffic whether moving wholly within the State of Texas or from or to Shreveport to or from such Texas points.

On June 17, 1915, the Interstate Commerce Commission decided this supplemental complaint by extending the territory to the line drawn through Texas as above requested and prescribing reduced class rates between Shreveport and all points within this substantially enlarged territory on a basis the equivalent of the Texas Commission class rate schedule up to a distance of 245 miles, and beyond on the basis of the Texas-Oklahoma scale to 400 miles. Likewise the same order as to commodity rates was made as in the former decision. The carriers filed tariffs in compliance with the order to take effect on September 15, 1915. These tariffs were suspended, subject to further hearing because of complaint on behalf of various cities, commercial organizations, and industries of Texas.

On December 17, 1915, the whole case was reopened, at which time the Shreveport interests filed a supplemental petition requesting that the same rate structure previously ordered and heretofore confined to eastern Texas be extended so as to cover the entire State of Texas. On July 7, 1916, the prayer of the complainants, practically in its entirety, was granted by the Interstate Commerce Commission, this being its third order. The commission reaffirmed its findings in the former cases, but extended its rate adjustment to the entire State of Texas.

In pursuance of this order the carriers filed with the Interstate Commerce Commission, Texas Lines Tariff 2-B, to take effect November 1 and to apply to the whole State of Texas. This tariff substantially followed the Texas class rates, but increased the commodity rates to the level of the Shreveport rates; also the Western classification was substituted for the Texas classification. Following this action an injunction was secured by the carriers before one of the district Federal courts restraining the Texas Commission from undertaking to interfere with the carriers' tariffs filed in pursuance of the order of the Interstate Commerce Commission in said Shreveport cases.

Regarding the effect of the action taken in these cases by the Interstate Commerce Commission, the Texas Commission, in its report for 1916 at pages 7-9, says:

Since November 1, 1916, when said Texas Lines Tariff 2-B, issued in alleged pursuance of the Shreveport order, took effect, this commission has, by reason of an injunction, been prevented from prosecuting the carriers that have ignored the rates of this commission on intrastate traffic, and have without this commission's authority published and applied rates on freight at variance with and much in excess of those prescribed by this commission. Although being handicapped by said injunction, which applies to Texas shippers as well as against this commission, such shippers, assisted by this commission, have used all their available means to relieve themselves of this unreasonable and unlawful burden in the way of freight rate increases. Prior to the taking effect of said Texas Lines Tariff 2-B, the Interstate Commerce Commission was asked to suspend the same on grounds and for the reasons fully and extensively set out to it. This, however, it declined to do, except as to some three commodities—cord wood, live stock, and lignite—but, in declining to suspend the tariff as a whole, that commission did set a date, to wit, December 6, 1916, when it would hear protestants on the proposition of reopening the Shreveport case. At this hearing the protestants appeared and again the Interstate Commerce Commission was asked to suspend the tariff and reopen the case, and in pursuance of these requests, that commission has reopened the case and will further hear the same; but it has again declined to, in the meantime, suspend said tariff 2-B. Thus, it appears, the shippers of Texas will be compelled to carry the burden of these unlawful and abnormally increased rates for an indefinite period.

Since this time (December 6, 1916) the cases have been reopened, reheard, and on January 21, 1918, final decision was rendered practically reaffirming said former decision, and assuming complete jurisdiction over all State freight rates and classifications, except, for the time being, a rate ordered by the Texas Commission covering the movement of gravel, a distance of 4 miles, from a certain pit to Waco, Tex., which seems to have met the approval of the Interstate Commerce Commission, and the carriers were scolded for having failed to obey this important State regulation.

It will be interesting to note the reasons given by the Railroad Commission of Texas as to why it prescribed and maintained a schedule of rates, both class and commodity, which were substantially lower than those maintained by the carriers from Shreveport to interior Texas points. In its annual reports for 1895-6 the Texas Railroad Commission said:

To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments. Besides adding to the citizenship of the State a desirable population and furnishing employment to persons already in our midst, and enhancing the taxable values of the State, and, as a consequence under wisely administered government, aiding in ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men in Texas having the capital to engage in a wholesale business or in a manufacturing enterprise, for the success of which natural conditions are favorable, they have as much right to invest their means in such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his State. Some of the Texas lines of railway constituting parts of interstate systems of railway, interested in long hauls, appear to be hostile to a policy which would foster Texas jobbing and manufacturing interests, while other lines manifestly favor such a policy. Outside cities bring to bear every pressure they can to coerce the Texas lines into a course favorable to their interests and adverse to the interests of Texas cities with respect to jobbing and manufacturing * * *. This commission has always had in mind the securing of relatively just State and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders.

This commission has often stated to the freight and traffic managers in their meetings with it that if the railroad companies engaged in interstate shipments would make and maintain rates which would be fairly compensatory to them

on such shipments this commission would do all in its power, by its rates, to secure them reasonable revenue on their railroad investments in this State, and we now repeat that statement, but this suggestion contemplates good faith on both sides in the making and maintenance of rates.

And again the commission said in its annual report for the year 1896:

The commission did not feel disposed when it gave notice in the form stated, nor has it ever been inclined to deny to the railroad companies such rates as are reasonably compensatory, even though to do so would necessitate an increase in rates, yet as a condition precedent to anything like a general increase in said rates the commission was and is determined that the railroad companies shall show that they receive reasonable compensation for transportation by them of interstate freights in order that it may be seen by the commission that they are not sacrificing their revenues on interstate hauls and seeking to recoup their losses against the people of Texas. * * * In making the demand there was no injustice to the railroads, for, viewed merely as roads operating in the State, it is to their interest to favor our policy of bringing goods from abroad into Texas cities in carload quantities and in distributing them from a jobbing house in such cities in less than carload quantities among the retailers. The freight charges they receive on local less than carload shipments within the State added to what they receive in the division of their through rates on carload shipments to the Texas jobber usually amount to more than they receive in the division of their rates on less-than-carload shipments from the jobber outside the State to a retailer in the State; and it can be shown to be to their advantage to pursue a policy favorable to the development of manufacturing in Texas. While by pursuing, along the lines indicated, a course favorable to the upbuilding of Texas jobbing and manufacturing enterprises the interests of Texas roads considered as such would be subserved, yet, constituting, as some of the Texas roads do, parts of interstate systems, the interests of the systems rather than the interests of the Texas lines are too often regarded. Here lies the main difficulty in our opinion in securing a just arrangement of interstate rates.

These statements were made a part of the record in the Shreveport case before the Interstate Commerce Commission, and there was also introduced the following letter from Hon. Allison Mayfield, chairman of the Texas Railroad Commission, to the secretary of the Progressive League of Marshall, Tex.

AUSTIN, TEX., *September 12, 1911.*

DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th instant, with which you inclose letter from Mr. A. T. Kahn, of Shreveport, to Mr. W. L. Martin, of this city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from this commission in order that you may properly understand the matter involved, and in reply you are advised: For the rates referred to from Shreveport to Texas points to be reduced, would in the opinion of this commission, be very much against the interest of the Texas jobber, whom it has been the endeavor of this Commission to protect, and by way of explanation we will state: Shreveport enjoys now, and has for some years past, very low carload rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in, plus their (Shreveport) local rate out, to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the (Texas) commission adopted its adjustment of rates. For the local rates to be now reduced from Shreveport to Texas points would tend to counteract the effect of this commission's action, and to place the Texas jobber at the same disadvantage under which he previously labored.

Here we have an official statement regarding the circumstances surrounding the enforcement of the long and short haul discrimination against Texas by the interstate railway systems, including reference to the coercive methods employed by industrial and commercial interests outside the State. Much has been said about the coercion which the railways have suffered under Texas railway regulation, but not

one word has ever been heard regarding the pressure exerted by the nonresident and nontaxpaying industrial and commercial interests, which would, under discriminatory rates, monopolize the commerce of Texas and retard its growth and development. This result, however, was avoided in Texas by its railroad commission reducing the local rates and thus offsetting the discrimination. It is also interesting to note that the Texas commission has always been ready to participate with the carriers in the working out of a just and reasonable system of rates, even though this might entail increasing the local Texas rates.

The Interstate Commerce Commission has justified the maintenance of these long-and-short-haul rates between northern and eastern defined territory and Shreveport in the following language:

If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that the railroads serving her are justified in extending to her inbound rates which are lower than those extended to Dallas and other cities in Texas, this is her advantage, of which she may take full benefit. The carriers may not say that they will absorb in outbound rates such advantages as Shreveport has upon her inbound rates. Railroads may assume that they have the right to control the destinies of cities and limit their jobbing territory or extend it as they see fit, but this is not a policy consistent with the theory of governmental regulation. If the inbound rates to Shreveport are compelled by natural conditions, the discrimination in her favor is not undue. If, however, this is an artificial relation established by the railroads, it is unlawful. If natural, the railroads certainly should not destroy it. If artificial, it should not have been established, and should now be removed. The act to regulate commerce is the outgrowth of a popular conviction that the railroads, when unhampered by restrictive law, attempted successfully to prescribe and define the channels of commerce in such a way as to favor certain localities, industries, and individuals. We do not here pass upon the relation between the rates into Shreveport from the north and east and those extended by the carriers to Texas points. If Texas communities have just reason to complain of this relationship which has been created by the carriers, hearing will be given them upon this matter and the full power of the commission exercised to correct any wrong which may exist in this situation. (Shreveport Case, 23 I. C. C.)

Pursuant to the foregoing invitation extended by the Interstate Commerce Commission, the Dallas Chamber of Commerce, on January 2, 1915, filed a petition with the commission in which it put in issue 87 representative carload commodity rates covering the movement of traffic from St. Louis and Kansas City to Dallas and Fort Worth and other northeastern Texas points, alleging that these commodity rates to said Texas points were approximately 50 per cent in excess of the rates on the same commodities from the said northern points to Shreveport, La. The main issue was the long and short haul system of rate making and the commission was petitioned to remove this 50 per cent differential in favor of Shreveport.

The northeastern section of Texas is exceedingly prosperous and comprises an area of 200 miles east and west by 100 miles north and south, and has within its borders two of the largest cities of Texas, viz, Dallas and Fort Worth.

The combined railway mileage from St. Louis and Kansas City to Dallas through Shreveport is 754 miles, compared with which the direct-line mileage to Dallas and Fort Worth is approximately 690 miles from St. Louis and 510 miles from Kansas City. The average short-line mileage from St. Louis to this section is 650 miles; from Kansas City about 550 miles. On the other hand, the short-line mileage from St. Louis and Kansas City to Shreveport is 562 miles, being practically the same from both points. Shreveport is 189 miles east of Dallas, but is not intermediate to Dallas on the direct

railway lines from St. Louis and Kansas City to Dallas and other northeastern Texas points. On the other hand it is 172 miles west of Vicksburg on the Mississippi River and 188 miles west of Natchez, 227 miles northwest of Baton Rouge, and 304 miles northwest of New Orleans. Class rates from all of these Mississippi River points to Shreveport range from 40 to 50 per cent lower than the class rates prescribed by the Railroad Commission of Texas, and also those prescribed by the Interstate Commerce Commission for outbound traffic from Shreveport into Texas.

In deciding this case (*Dallas Chamber of Commerce v. Atchison, Topeka & Santa Fe Railway*, 40 I. C. C., 619) the commission reaffirmed its decision in the *Southeastern Cases*, 30 I. C. C., the *Shreveport Case*, 23 I. C. C., and also the *Texarkana Case*, 28 I. C. C., 569, to the effect that the long and short haul rates maintained by the carriers to Shreveport had formerly been compelled by water competition, and in lieu of granting the petition of Dallas for the removal of the discrimination in favor of Shreveport, reduced the rates from St. Louis-Kansas City to northeastern Texas points \$1 per ton, or a general average reduction of approximately 10 per cent, and this is to be compared with said average differential of 50 per cent complained of by Dallas.

The effect of this adjustment, and the rates as they stand to-day, is illustrated by taking the carload rate covering the movement of printing paper from St. Louis to Dallas and Fort Worth. The rate to the publishers at Dallas and Fort Worth was \$12 per ton, which by said order was reduced to \$11 per ton, but the long-and-short-haul rate to the Shreveport publishers was not disturbed, and was allowed to remain at \$8 per ton. This comparison exhibits, not actually but in a general way, the disparity in the through rates covering the 87 Texas commodities referred to and forcefully exemplifies why the Texas commission found it necessary to offset this discrimination by a reduction in the local rates. While the disparity in through rates will vary in other territories, the general effect of the long and short haul rates as applied throughout all of the southern and intermountain States is the same. For example, as before stated, the publishers at San Francisco are accorded a rate of \$17 per ton on printing paper from New York, while the Nevada publishers, who are situated on the main line intermediate to San Francisco, are required to pay \$22 per ton, or a differential of approximately 30 per cent. The haul to Reno is 240 miles shorter than to San Francisco, to Winnemucca 415 miles, and to Elko 550 miles.

The CHAIRMAN. Mr. Shaughnessy, I think we will take a recess now until 10 o'clock on Monday morning.

(Thereupon, at 12.45 o'clock p. m. the committee adjourned until Monday, December 17, 1917, at 10 o'clock a. m.)

MONDAY, DECEMBER 17, 1917.

The CHAIRMAN. Mr. Shaughnessy, are you ready to proceed?

Mr. SHAUGHNESSY. Yes, sir. When we closed on Saturday I was dealing with the Texas situation. I will continue from that point.

The effect of the intervention of the act to regulate commerce in the Shreveport cases has, as Chairman Mayfield predicted in his letter to the secretary of the Progressive League, of Marshall, resulted in counteracting the orders of the Texas commission equalizing the

Shreveport discrimination "and placing the Texas jobber at the same disadvantage under which he previously labored." Unless Congress grants relief the inevitable result must be to build up the border cities on and tributary to the Mississippi River and the Gulf of Mexico at the expense of the shippers and consumers of Texas by the maintenance of these artificial long and short haul rates.

In other words, the development of Texas, with its area of 265,800 square miles and population of 4,500,000, will be retarded, and its commercial and industrial business will be largely handed over to Louisiana, with its area of 48,500 square miles and population of 1,800,000 people.

As indicative that both Texas and its railways have prospered under the Texas Commission made rates, it may be said that the population has grown from 2,235,000 in 1890 to 4,500,000 in 1916, that the railway gross earnings have grown from \$35,000,000 in 1890 to \$113,000,000 in 1916; that the railway mileage has grown from 8,650 to 15,600 miles, an increase of 80 per cent; that the revenue freight tonnage has grown from 10,944,000 to 58,482,000 tons, and that the average revenue per freight-train mile has grown from \$1.49 in 1890 to \$2.92 in 1916. Taking the year 1913 as a fairly normal period, the average revenue per freight-train mile was \$2.73 for all classes of carriers in Texas, compared with which the freight-train mile earnings for the "Southern District," embracing only roads of the first class, those having earnings in excess of \$1,000,000, was \$2.65.

These tests show that both Texas and its carriers have prospered and that the Texas lines have enjoyed a remarkable increase in traffic and fine gross earnings under the regulation of the Texas commission during the time it equalized the Texas rates and offset the Shreveport discriminatory long-and-short-haul rates. May it be fairly said that Texas should not have exercised its sovereign power in behalf of the accomplishments herein referred to? In other words, while providing for equality and without burdening the movement of interstate commerce to or from its original sources of supply, could the State have done anything less if it was to protect its people and commerce from exploitation, and at the same time insure a steady growth in population, wealth, and State development?

RECENT REPORTS ON WATER TRANSPORTATION.

In view of the fact that our petition before this honorable committee for an absolute long-and-short-haul provision to the act to regulate commerce will affect all interior sections of the country served by navigable rivers, as well as those sections of the country tributary to the Pacific and Atlantic Oceans and the Gulf of Mexico, let me briefly lay before you some documentary evidence relating to the matter of water competition in general.

Under date of October 5, 1917, Hon. John H. Small, chairman of the House Committee of Congress on Rivers and Harbors, directed a letter to the Secretary of War, in which he said in part:

There must be a complete coordination between water transportation lines and the railroads, and a pro rate of traffic as to through rates between the water carriers and the rail carriers, such as now exist between the several lines of railroads, to the end that each may compliment the other and be jointly dedicated to the service of the public.

The committee submit that the above additional facilities are both necessary and feasible. They further suggest as a general proposition that water terminals must be provided by the State or by municipalities, or other public agencies of the State, and that water carriers must be organized and maintained by individuals, corporations, or other local agency. It may be substantially stated that Congress may only improve for purposes of navigation the capacity of the channels of the interior waterways. It will be admitted that there are a limited number of harbors and a larger number of interior waterways on which the foregoing essentials have not been provided. In fact, it may be stated that the people of the country, including even that forceful class of citizens who manage large industrial units and are vitally interested in transportation, appear to have slight knowledge of the primary essentials for securing transportation by water. The demand for the movement of products by water which exists under normal conditions has been made acute under war conditions, and in many cases the essential facilities are lacking.

The committee are impressed with the conviction that it is their duty to draw attention to this serious dereliction of duty upon the part of the public, and to express the opinion that appropriations should not be made for the improvements of those rivers and harbors where the communities and localities are continuously unwilling to discharge their correlative duty by providing the facilities essential for the promotion of water transportation.

Here, gentlemen, is a recognition by one of the most important committees of Congress, which is charged with the duty of providing for the improvement of our natural waterways, that the water transportation of to-day may be considered practically nil.

Recently, Secretary Charles Keller, of the Council of National Defense's inland water transportation committee, said, among other things:

The waterway connecting the Delaware River and New York Harbor, which is under practically perpetual lease to the Pennsylvania Railroad, formerly carried a comparatively large traffic in hard coal. It is now little used, although it might, with certain minor modifications, be used to advantage as one of the principal links of the through water route to New York. Its nonuse is naturally detrimental to the people of the seaboard States, but no remedy appears to exist short of the construction, by the people, of a parallel route.

Again, Mr. Raymond B. Price, in a communication recently sent out by the conference committee on national preparedness, said in part:

That the railroads owned perhaps a majority of the valuable docks and dock sites all over the country on harbor, bay, river, canal, and lake; and that this is a relic of antiwater transportation policies which are inbred in our railroad men from top to bottom.

In an effort to relieve rail congestion and patriotically follow the plea of the War Department to use water transportation wherever possible the Keystone Steel & Wire Co. endeavored recently to ship pig iron by water route from Alabama to Peoria, Ill. A short rail haul was necessary, about 35 cars being needed. The Southern Railroad had the cars but refused to furnish them for that purpose. A trip to Washington to get the aid of the War Department and Mr. Daniel Willard was necessary, and with their assistance the cars were obtained and the shipment started. Although several tugs and barges better adapted to conditions for navigating the Tennessee, Ohio, Mississippi, and Illinois Rivers were needed, the results of the shipment were so satisfactory that another trip was made, and water transportation became established for that company.

The munitions output of New England is dependent upon ocean-going tugs, as two-thirds of New England's coal supply is delivered by water, and the overloaded railroads are unable to increase their coal deliveries to compensate for commandeering of vessels in the New England coal trade. Thus again our war achievements are limited by our transportation facilities both on land and on water.

The Interstate Commerce Commission has ample testimony to prove that the New York, New Haven & Hartford Railroad persistently diverted traffic from its own water to its own rail lines, in spite of the fact that its boats were generally underloaded and that the water haul was frequently cheaper and quicker. Unfair apportionments of cost between boat and rail, lack of compact packing of freight on the boats, and other methods were used to obscure the issue from the public. The public

certainly was defrauded of its rights to have goods transported as cheaply and as expeditiously as any available means would permit.

The managers of some of our railways, however, since we entered the war, have repeatedly urged their employees to do everything they could to foster water transportation. The obstacles built up these past 80 years by the railroads against water transportation can not be overcome quickly through the voluntary efforts of railway leaders. The men in general do not realize our national necessities to the same degree that the leaders do. Hence it is not so easy for them to change their state of mind.

Again, the report of the Inland Waterways Committee of the National Council of Defense, recently made public, contains the following remarks:

Except as a last resort, at present shippers will not use the waterways unless water carriers can offer a reasonable differential under the rail rates, thereby affording a sufficient saving in cost of transportation to compensate for the difference in time and service, and a proper use of the waterways will not be made until this requirement is met. In a certain case the rail rate was 10 cents per hundred, Arkansas City to Cairo, while the barge rate was 6½ cents. This does not, however, mean a saving of 3½ cents to the shipper, because the latter pays the cost of transfer to cars at Cairo and may, moreover, be at greater expense for loading to barges at point of shipment, since cars are usually set conveniently and a wagon haul is often required to load the barges.

An example of these water competitive rates was recently brought to our notice by a river boat line, and inquiry showed that the rail rate on lumber from Arkansas City, Ark., where water competition may arise, to Cairo, Ill., is about two-thirds the rate from McGehee, Ark., an interior point, although traffic from Arkansas City to Cairo passes through McGehee. Rail rates from the lumber-producing territory in the vicinity of Arkansas City have recently been raised, but those from points having possible water competition still remain relatively low. Illustrations of this kind might be multiplied indefinitely.

At present the inland waterways are, as a rule, lacking in the proper organization of their facilities of all kinds. Originally business grew up and was located on the banks of the waterways. When the railroads superseded the water carriers, and partly because space for expansion could also best be obtained by removal, business withdrew from the river bank or at any rate readjusted its methods so as to depend almost exclusively on the railroads. * * * Just so long as the railroads are permitted to carry part of their traffic without the average of profit and to reimburse themselves at the expense of the rest of the country, just so long will the waterways have difficulty in carrying their just share of the country's traffic. We have been informed that in some cases the railroads intend now to raise abnormally low rates which are based upon merely possible, and not actual, water competition, but the readjustment so far appears slow. To the objection that raising of rail rates to water points will benefit only the railroads, the reply is that if rates to interior points are unduly high, they should be reduced and that, moreover, the water lines may be expected to charge rates at least as low as the present nominally competitive railroad rates, since otherwise the waterways will probably get none of the traffic in the present circumstances of location and organization of our mercantile and industrial community.

Public interest in inland water transportation is lukewarm, and, in view of the abnormal cost of carriers (boats) and of their operation, and the risk involved in the attempt to establish this virtually untried enterprise, it is natural that the community be reluctant. In the opinion of your committee, in the existing circumstances, the policy of the United States as to floating equipment should be to give support, either by the direct construction of boats and barges and their subsequent charter to trustworthy concerns, or by enabling materials to be secured promptly and cheaply by such dependable concerns as are shown to desire to build their own fleets. The amount of help given should be the least that will permit needed water transportation enterprises of assured character promptly to be initiated, and any investment by the United States should be carefully protected.

The CHAIRMAN. Whence does that report come?

Mr. SHAUGHNESSY. This report comes from the Inland Waterways Committee of the National Council of Defense. It was recently rendered, some two or three weeks ago.

Do not these reports conclusively prove that there are no effective water competition agencies at the present time, and that the rail carriers maintain a long and short haul rating policy not only for the purpose of meeting water competition but for its elimination as well?

Further, is this not a profitable field wherein the Government might properly become a partner in the business of transportation? First, for the purpose of having well organized and well developed waterway facilities for the meeting of a national emergency, such as the present war entails; and, second, for the purpose of furnishing a reasonably adequate and constant service by water instead of the fluctuating and uncertain service of the past. And in any event, if this line of transportation is to be promoted either by private parties or the Government or both, is it not absolutely essential that it must receive the protection of an absolute long and short haul amendment to the act to regulate commerce, which will effectively prevent the carriers from annihilating water competition as they have in the past?

I shall now touch briefly upon the long and short haul discrimination occasioned by rail lines, competing for business at certain large cities, due to the long mileage line or circuitous route undertaking to meet the rate of the short mileage line or lines at large commercial and industrial centers, at rates less than those charged at interior points on the line of such circuitous routes. This practice results (1) in a violation of the law of economics; (2) in building up large cities at the expense of the small interior towns and cities; (3) in the wasteful use of freight cars which at all times and especially during the present emergency should be employed only over direct routes of shipment, thus helping to relieve the car shortage and to save by so much the present waste in the public transportation bill.

Speaking generally, we may illustrate the matter by reviewing the operation of this character of competition. Take, for example, a new and modern line with superior facilities, which has been constructed to an important commercial center or centers by a shorter route than that of the old established line or lines, which may not have been economically constructed and operated, as is often the case. The new line is thus enabled to profitably establish lower rates to said commercial centers than those formerly maintained by the old line. Without regard to any improvement in facilities, or the reduction in mileage, or otherwise, the older line undertakes to meet the rates of the new modern line at said commercial center or centers, while at the same time charging higher rates at many of the intermediate points on its line. This results in a duplication and waste of facilities at the expense of the public generally on the one hand, and on the other results in building up and centralizing population and commercial activity at said centers at the sacrifice of the towns and cities intermediate thereto.

To authorize the continuance of this practice means that the older, less modern, and longer line will not be compelled to improve its facilities and service in order to meet competition on the basis of nondiscriminatory rates to its patrons at all points on its line, which in the interests of an equal development of all sections served, it could and should be required to do. Further, it means putting a premium on obsolescence and inefficiency on the one hand and

monopoly on the other, and therefore should not be authorized as a matter of governmental policy. The shippers and consumers at intermediate points can not morally or justly be called upon to contribute to the cost of offsetting the effect of natural competitive conditions and facilities by the payment of higher rates for shorter than for longer hauls. Such practices can not properly be designated as "meeting competition." On the contrary, it means in all cases the neutralizing of competition, and in many its complete destruction.

In this connection let me quote what Judge Cooley has to say on the moral and economic side of this character of discrimination, at page 32 of the second annual report of the Interstate Commerce Commission:

It was impossible that it should be made to seem right to the common mind that such distinction should exist; the sense of justice received a shock when one was told that the small dealer in the country town was made to pay three times as much for the carriage of his goods as the city merchant paid upon the like quantity, for even a greater distance; and a well founded feeling of discontent arises among any people when it can see things done under the protection of its law which seem to be plainly and unmistakably unjust.

It will probably not be claimed by any one that it is desirable to give by law or through the use of public convenience an artificial stimulus to the building up of cities at the expense of the country. In great cities great social and political evils always concentrate, grow, strengthen, and the larger the cities are the more difficult it is to bring these evils under legal or moral restraints. The fact is so generally recognized that the feeling may be said to be practically universal that the interest of any country is best consulted when public measures and the employment of public favor are devoted to the diffusion of population and the profitable employment of industrial energy everywhere, rather than the concentration of population in few localities.

Exemplifying what is said above, this process of centralization has become so acute that for many years past there has been insufficient farm labor available for profitable operation and in many cases the owners of the farms throughout New England and Eastern States have put them up for sale at exceedingly small prices, and moved to the large cities to engage in industrial and commercial pursuits.

This emphasizes the evil effect of a governmental policy which does not provide equal opportunity for the uniform development of all territory within its jurisdiction, and therefore, vigorous steps should be taken looking toward the adoption of a comprehensive plan for the decentralization of our population, and the more equitable development of our great resources.

May I not submit that what I have said before conclusively proves that there is no water or rail competition of sufficient importance to justify continuing the discriminatory long-and-short-haul system of rate making for the future, which during the past has practically destroyed water transportation, prevented normal development of our natural waterways, centralized population, and built up favored industrial and commercial centers situated on or near our waterways at the expense of the great interior sections of the United States, and contributed perhaps more than any one thing in promoting community jealousies out of which have grown much of the resentment and hostility toward the railroads. Further, while the United States has pursued a policy of building up its railway transportation system at the sacrifice of and without regard for the development of waterway transportation, it can not be too strongly urged that the present fourth section of the act to regulate commerce has signally failed as a matter of wise national policy, and that the time has now arrived when an absolute long-and-short-haul provision should be enacted.

EFFECT OF METHOD EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION IN THE REMOVAL OF DISCRIMINATION.

The removal of the so-called Texas discrimination by the means employed in the Shreveport case and others similar in character which, under an alternative order issued, permitted the carriers to remove it by increasing the Texas rates, is justified by the Interstate Commerce Commission in its thirtieth annual report in the following language:

If we find rates in our opinion are unjust, unreasonable, and unduly prejudicial as alleged, it becomes our duty to order the cessation of these violations of the act, to determine and prescribe just and reasonable interstate rates to be thereafter observed as maxima, to require the carriers defendants to remove undue prejudice found existing, but we can not prescribe the exact rate or minimum rate to be maintained, nor do we specify the particular method to be employed in removing the undue prejudice. The carriers remain at liberty to issue, in compliance with the act, such rates as they see fit, provided they do not exceed those set as maxima and do not continue the undue prejudice. In eliminating the latter they may lawfully reduce interstate rates to the basis of the State rates, increase the latter to the level of the former, or otherwise equalize the two in such a way as to do away with the undue prejudice.

This construction of the act received the approval of the United States Supreme Court in the Shreveport case, or more properly speaking the *Texas case*, 234 U. S. 342, and in the *South Dakota Express Rate cases*, 244 U. S., 617.

The question of State rights is again vigorously raised by a conflict between the State and Federal courts in the Illinois passenger fare case (*Business Men's League of St. Louis v. A. T. & S. F. Ry.*, 41 I. C. C.). The decision is now on appeal before the United States Supreme Court where the case has been argued and is now submitted. There is no reason to hope for any different construction than was given in the *South Dakota Rate case*, 244 U. S., 617, where it is held that even reasonable rates themselves must yield if necessary in the removal of discrimination. Under these alternative orders of the Interstate Commerce Commission the carriers may be empowered to destroy practically any and all kinds of State-made rates whenever brought into issue by a complaint of discrimination from interests outside the State as in the Shreveport, South Dakota, and Illinois rate cases. Likewise there is, as will hereinafter more clearly appear, grave danger of a complete breakdown of the effectiveness of railway regulation by a disregard of those fundamental principles of regulation which after many years of experience have been adopted by the people of the various States through the medium of their legislatures, courts, and commissions. Let me illustrate, for your information, the trend in this direction by an analysis of the Illinois passenger fare case.

The decision of the Illinois passenger fare case followed the Five Per Cent Freight Rate case, 31 I. C. C., 351, covering official classification territory, in which case it was held among other things that the passenger department of the railways was not paying its fair share toward an adequate return upon the property. Thereafter an application of the carriers for an increase in passenger fares was heard and decided in what is known as Increase in Passenger Fares in Western Territory, 37 I. C. C., 1. In this case the Interstate Commerce Commission took as its base the accumulative cost of road and equipment without any allowance for depreciation,

obsolescence or otherwise, and decided that the interstate passenger fares throughout the Middle States territory should be increased from 2 cents to 2.4 cents per passenger per mile. The rates theretofore for passenger service in the State of Illinois had been 2 cents per mile for both inter and intra State traffic, the 2 cents fare for State traffic having been fixed by the Legislature of Illinois in 1907, and by the carriers for interstate traffic.

Following this disparity in the rates created by the order of the Interstate Commerce Commission, the Business Men's League of St. Louis, on February 10, 1916, brought an action before the Interstate Commerce Commission complaining against the discriminatory application of the 2.4-cent fares between Chicago and St. Louis, Mo., as compared with the 2-cent fare between Chicago and East St. Louis, Ill. In removing this discrimination, the Interstate Commerce Commission ordered that its previous findings regarding the interstate rate base of 2.4 cents per mile be affirmed as just and reasonable, and in connection therewith ordered the railways to remove the discrimination which, under the circumstances, could only be done by increasing the 2 cents per mile legislative-made rate to 2.4 cents per mile for State traffic. In pursuance of this order the carriers filed tariffs establishing said 2.4-cent fare and applied to the District Federal Court at Chicago for a temporary injunction before Judges Evans, Landis, and Carpenter to enjoin the Illinois State officers from prosecuting them for violation of the 2-cent fare State act. This application was denied and the case was thereafter heard on its merits before Judge Landis, who dismissed the action on the ground that "the undoubted purpose, and the undoubted effect of the words the commission used in its order of October 16, 1916, was to completely nullify the Illinois 2-cent fare—was to kill the Illinois 2-cent statute, and substitute for it, the authority of the Interstate Commerce Commission of the United States. * * *." Further, that the commission was without constitutional or statutory power to make an order which had for its purpose the abrogation of the State 2-cent fare statute; and that the order was broader than the issue. In other words, that the removal of the discrimination complained of between Chicago and St. Louis, did not authorize the Commission to make an order affecting the entire State.

Upon appeal from this decision to the Supreme Court of the United States Justice Clark also denied the carriers' application for said injunction against the officers of the State of Illinois, whereupon it was stipulated, at the request of the carriers, that the case be advanced for hearing and argument before the United States Supreme Court on its merits October 2, 1917. Thereafter, during May or June of the present year, the Interstate Commerce Commission brought a proceeding against the carriers before the district Federal court at St. Louis, for the enforcement of the order held invalid by Judge Landis and denied upon said preliminary motion before the United States Supreme Court by Justice Clark as aforesaid. In this new proceeding the carriers practically consented to the entry of a decree by Judge Dyer of the Federal court, requiring them to obey said order. Upon notice of the carriers that they would make the fares within Illinois 2.4 cents per mile, the Attorney General, upon request of the Illinois Railroad Commission secured an injunction from the Illinois Superior Court at Chicago restraining the carriers

from violating said 2-cent fare act. Thereupon the Interstate Commerce Commission asked the Federal court at St. Louis to adjudge the carriers in contempt for failure to comply with the aforesaid Federal court order requiring the rates to be made 2.4 cents per mile.

In granting the application of the Interstate Commerce Commission Judge Dyer, in his opinion, gave notice to the State of Illinois and its authorities that if they attempted in any way to enforce the injunction issued by the State superior court at Chicago, or prosecuted the railroad companies concerned in their attempt to comply with his order requiring the carriers to make the fare 2.4 cents per mile, he would adjudge said authorities to be in contempt and incarcerate them in jail at St. Louis. Here it will be noted was a direct conflict between the Federal and State courts on the question at issue. In order to temporarily adjust the controversy a joint and concurrent resolution was introduced before Congress by Senator Sherman, of Illinois, June 20, 1917, directing the Interstate Commerce Commission to withhold action pending final determination of the question set for hearing before the United States Supreme Court on October 2, 1917. Since the foregoing the United States Supreme Court in the Illinois case has rendered its decision, in which Judge Landis is sustained and the Interstate Commerce Commission and Judge Dyer are reversed. But the Commission is still empowered to remove discrimination providing its procedure is correct.

CONSIDERATION OF FUNDAMENTAL PRINCIPLES OF RAILROAD REGULATION.

In its opinion in this case the Interstate Commerce Commission proceeded at considerable length to make out a case against the reasonableness of the 2-cent fare in Illinois and among other things emphasizes the increased cost of equipment, its increase in weight, and, by inference, the increased cost of operating same in passenger trains for the year 1913 as compared with 1903. In this connection it was shown that the purchase cost of a six-car train operating between Chicago and St. Louis over the Illinois Central Railroad has increased \$36,473, whereas the weight has increased 252,500 pounds, or, in other words, an increase of 126 tons per train.

Without desire to indulge in criticism, but because of the importance of protecting and preserving the fundamental principles of regulation which have been adopted by the States and approved by the courts, exception must be taken to the use of total accumulative cost as a basis upon which to increase rates and predicate a fair return. This is a most serious departure from time-honored practices in the field of regulation. In fact, it is the very annihilation of the principle that "an adequate return shall be predicated only upon the fair present value of the property at the time of the inquiry." Until adopted in these cases, no court, commission, or other regulative tribunal in this country has ever subverted such an important principle as this in its determination of what is just and reasonable to the public. I consider the action exceedingly harmful for the reason that it will be invoked against public regulating bodies and courts by the public-service corporations throughout the country, and, while the United States Supreme Court is thus far firmly committed against any such propaganda, it may, because the findings of the Interstate Commerce Commission on questions of fact are rarely

overturned by the courts and usually accepted as final, result in placing upon the public an absolutely unjustifiable burden.

Covering 250,000 miles, the accumulative cost of our railways now totals approximately \$18,000,000,000, or an average of \$72,000 per mile.

Mr. ESCH. Where are you getting those figures?

Mr. SHAUGHNESSY. These are figures from the Interstate Commerce Commission report.

Mr. ESCH. Eighteen billions?

Mr. SHAUGHNESSY. Yes; are the figures higher than you had in mind?

Mr. ESCH. Higher than some of the testimony that has been presented.

Mr. SHAUGHNESSY. This is the total accumulative cost. It is not the net cost. It is the accumulative cost or the book cost; all the money that has gone into the railroads since their inception, without regard to obsolescence or retirements.

In the western 5 per cent advance rate cases before the Interstate Commerce Commission in 1915 there was introduced on behalf of the western railroad commissions, including the Nevada commission, testimony showing that the appraised present value of twenty-five (25) railways serving Michigan, Wisconsin, Minnesota, South Dakota, and Nebraska, comprising 29,000 miles of line, was \$937,000,000, or an average of \$32,330 per mile, compared with which the stock and bond par value (not the market value) was \$1,459,000,000, and that the accumulative property investment cost was \$1,489,000,000, or an average of \$51,340 per mile.

In Nevada, the Interstate Commerce Commission has just completed its reproduction valuation of the property of the Tonopah & Goldfield Railroad covering 113 miles of line. As indicative of the wide variation between the company's book cost and the inventory value found by the Federal valuation engineers, let it be said that the accumulative cost of road and equipment reported by the railroad company is \$3,700,000, or an average of \$32,680 per mile compared with which the Commission's reproduction new value is \$2,180,000, or an average of \$19,225 per mile.

The Nevada Railroad Commission has, because not able to bear the expense of an inventory valuation of large railway systems, endeavored to secure a fairly close estimate of the fair present value of railway property for rate-making purposes by a comparison of the construction cost of new properties with those similar in standard and by requiring the carriers to submit an inventory of the cost of reproducing their properties whenever possible. By combining these methods fairly satisfactory results have been secured both to the carriers and to the Commission.

The fallacy of using book cost is quickly demonstrated by the carriers themselves when their property is under consideration for taxation. Showing is always strongly and properly made that accumulative cost must not be used because it does not take account of the obsolete and discarded property, and that it does not fairly measure the real value of the property then in existence and beneficially used in the public service. The State authorities have, I believe without exception, accepted this view as sound, and a number of States, notably Wisconsin, Michigan, and New Jersey, have made inventory

valuations of their railway property for the purpose of accurately establishing the actual cash value for taxation. In finding the "cash value" for taxation and sale (the rule being the same in both cases) there is included the intangible value made up from the earnings on the rates fixed on the "fair present value." The *Monongahela Case* 148, U. S. 312; The *Backus Case*, 154 U. S. 439. Therefore, the sale or taxation cash value can not ordinarily be taken for rate-fixing purposes because to do so would justify continuing increases in the rates if the business remains normal or is upward in tendency. There is much confusion in the public mind regarding these distinctions in value—many people believing that the "cash value" evidenced by stocks and bonds in some cases and by the earnings in others should be the basis upon which to fix rates for the shippers and consumers, but as before stated this would justify a continuing increase in rates without in any way increasing the service to the shipper or the cost thereof to the carrier. (See *New Jersey Gas Case*, 87 Atl. 651.)

If all of the 250,000 miles of railway within the United States, large and small, including main and branch lines, both productive and non-productive should upon final appraisalment by the Federal valuation board reach an average valuation of \$50,000 per mile, which, all things considered seems high for rate fixing purposes the fair present value of the railways would be $12\frac{1}{2}$ billion dollars, compared with which the book cost value is approximately 18 billion dollars. If upon said fair present value the carriers should for the future, under normal conditions and reasonable rates, earn 900 millions net per annum, after deducting operating expenses and taxes, it will be the equivalent of 15 billion dollars on a 6 per cent basis, and this amount will be the condemnation or sale value.

The variations in the valuations above referred to speak for themselves and emphasize the danger and injustice to which the various States will be subjected if just and reasonable rates for intrastate traffic are to be nullified, and thereafter increased by an order of the Interstate Commerce Commission predicated on the basis of accumulative cost value instead of fair present value, as was done in the *Illinois case*. In this behalf the Interstate Commerce Commission said in the *Western Passenger Fare Case*, 37 I. C. C. 16, upon which the *Illinois case* was based:

The liability of error in accepting the book cost of property as the basis for the computation of return on investment is fully realized.

Further, if such accumulative cost of the railroad property is validated or recognized, will it not make it exceedingly difficult to hereafter bring into the equation the matter of the fair inventory valuation of the railways now being made by the Interstate Commerce Commission under an act of Congress? This matter is of such vital importance that attention should be given to it in time to prevent a burdensome surplusage, such as here indicated, being added to our transportation bills, and to prevent the railroads from denying the public the benefit of such just and reasonable rates as should be prescribed on the basis of fair present value.

Exception must also be taken to the use of increased weight, increased cost of equipment, and increased cost of operating passenger trains, as a justification for increased local passenger fares. This line of reasoning is not convincing, and standing by itself, is almost as fallacious a base upon which to predicate just and reasonable passen-

ger fares for State traffic as is the matter of using the total accumulative cost of road and equipment instead of "fair present value," for the reason that while intimation is made by the commission as a preface to its analysis, that these improved passenger train facilities have been demanded by the public, they have, as probably all know, been inaugurated largely for the benefit of the through long haul interstate traffic and not for the benefit of purely local State passenger traffic. It is, therefore, unreasonable to intimate that any substantial portion of the cost of these increased facilities should be charged against local State traffic. In this connection, it is to be stated that it has been the uniform policy of the railways for years, and is to-day, to use its passenger department largely as an advertising medium, as well as for the purpose of rendering an adequate public service. It, therefore, results that the carriers maintain a policy of building this branch of the service far in advance of the public needs, and in vieing with each other in an effort to make its passenger service just a little bit better and more inviting than that of its rivals, in order to encourage travel to its lines, and thus by furnishing a superior and more luxurious service, secure freight business. This in turn has resulted in a wasteful duplication of passenger train service between important interstate centers of travel, and it is also responsible for the exceedingly costly State passenger train service furnished on account of said trains being made up of heavy standard and tourist sleeping cars, buffet cars, observation cars, and dining cars; also the operation of trains De Luxe, used exclusively for the benefit of through traffic, and special train service accommodating heavy colonization and excursion business—practically all of which is properly chargeable to interstate traffic, and with which local traffic is only incidentally concerned. Yet the Interstate Commerce Commission, by its decision in the *Illinois Passenger Fare Case*, holds that the people who are traveling locally between points within the State must bear their proportionate share of all these burdens, without regard to the fact that the incidental benefit to them is small and that they are in no way responsible for the heavy train and locomotive equipment which is made necessary in order to maintain this through competitive service. From the standpoint of what, all things considered, may constitute a reasonably adequate local service the distinction to be observed between through and local train service, is fairly exemplified by the electric railway lines upon which a comfortable and expeditious passenger service is maintained throughout different States at rates ranging from $1\frac{1}{2}$ to 2 cents per mile.

The train facilities used by the carriers in furnishing a through passenger service are without question the finest to be found in the world, but there is reason to seriously question whether the cost thereof is not becoming too burdensome to both the railways and the traveling public. The average passenger train to-day is six cars and locomotive, comprising mail, baggage, and express cars, coaches, and dining, sleeping, and observation cars.

Estimating that all steel cars are used, which the railways have been and are adopting as rapidly as possible, the dead-weight tonnage of such a train will average approximately 550 tons. The average train capacity is not less than 150 passengers, whereas the average load is 54 passengers or 36 per cent of capacity. Further, the analysis indicates that in the use of the modern six-car all-steel

trains an average of 10 tons of equipment is used in transporting each passenger. Is this not an unreasonable waste? No such tonnage as this is reasonably necessary, and unless steps are taken to correct it, the bulk of the local passenger business will, due to improvements in the art of transportation by self-propelled overland vehicles, be taken from the rail carriers. In this connection it is interesting to note the rapid growth of automobile and auto stage traffic, and to keep in mind that an attractive and comfortable local service is furnished through this medium by the use of facilities averaging about one-fourth ton per passenger, as compared with the aforesaid 10 tons. In my opinion, passenger-train weight should be cut right in two and the public at large given the benefit of as economical a passenger service as is consistent with comfort and safety. The present passenger facilities are, for the above reasons, wasteful and place too heavy a burden upon the public in carrying and maintenance costs and investment. No regulation of this feature of railway service has been undertaken on behalf of the public. Unless it is taken in hand the carriers are free to go on increasing the capacity of their facilities and likewise the strength of their tracks, because the former forces the latter, and thus building into the future and increasing the investment sufficiently to not only offset the normal increase which takes place in traffic, but ultimately to justify, under the Commission's policy in the Illinois case, 4-cent local fares.

Carrying this analysis a step further, the railway operating statistics show that freight-carrying equipment has largely outgrown reasonable proportions; that it is cumbersome and expensive in investment, operation, and maintenance; and that it does not show the operating and service efficiency that might reasonably be expected. The average dead weight of cars and engines in train lots for 1915 was approximately 24 tons per car and their average carrying capacity was 40 tons each, but the average load of freight carried was only 13.8 tons per car, or a load factor of 34½ per cent. From this it will be seen that a nonproductive dead weight of 65½ per cent in equipment was hauled during the year 1915. Besides the waste involved in investment, operation, and maintenance of the entire plant these excess-capacity facilities are largely responsible for a very slow freight movement to the disadvantage of the shipping public. Regulation and relief should be provided for along these lines. Recently Daniel Willard, Esq., railway president and member of the Council of National Defense, made the statement that freight cars were in the hands of shippers 37 per cent of the time, and that of the balance, or 63 per cent of the time that the cars are in possession of the carriers, they are moving but 11 per cent of the time.

Again, the statement recently issued by the Railway War Board shows that the average engine movement on the railways of the United States is only 68 miles per day, and that the car movement is only 28 miles per day, or hardly the equivalent of ordinary every day suburban truck and automobile mileage. In view of the fact that thus far there has been no effort on the part of the Interstate Commerce Commission or Congress to prescribe freight movement speed regulations and as the matter has been one of railway policy and management it can not be said that State or national regulation is responsible for this condition of affairs. On the contrary it may be said that it is because of the absence of such regulation—which, manifestly, is necessary for the future.

Seemingly, everything has been subverted to the question of increased train loading, upon the theory that it would result in greatly improved operating economy. It is doubtful, however, whether this result has been satisfactorily accomplished when proper consideration is given to the largely increased investment made necessary in track and equipment, the heavy cost of maintenance of engines and cars occasioned by "drag tonnage trains," and the wasteful cost of handling the enormous dead-weight in equipment, which, as before shown on a load factor basis, is unreasonably excessive in capacity. As before stated, this policy of heavy train loading has resulted in an exceedingly slow freight movement to shippers and consumers, and it is responsible for much of the car shortage which exists to-day. It has also limited the monthly mileage of train and engine men, upon which the adequacy of their compensation largely depends and has forced them to make frequent demands for an increase in the mileage units of pay in order to secure a fair monthly compensation. I believe that if the train and engine men had been enabled as traffic grew to increase their monthly mileage reasonably and without undue hardships, instead of sacrificing everything to tonnage train loading, it would not have been difficult to adjust the wage question satisfactorily without the intervention of legislation in the various forms it has taken during recent years. And by the same means the public would have received the expedited freight movement to which it is fairly entitled, and which it will ultimately demand and enforce by requiring a movement averaging 15 or 20 miles per hour between terminals instead of the present speed of approximately 10 miles per hour.

Aside from the natural reluctance or the refusal of the States to relinquish their sovereign power to regulate their own internal commerce and its instrumentalities, these are the reasons why they can not consent to any scheme of regulation which will put them at the mercy of such practices as are herein referred to.

In closing let me state that I have always been opposed to Government ownership of railways, because I am confident that if really effective public regulation is enforced instead of the present so-called reasonable regulation the railways can be satisfactorily operated under private ownership and management. Thus far, however, "effective regulation" has been forestalled by grudging consent or exceedingly moderate concessions on the part of those regulated. In this connection the various States have made the nearest approach to effective regulation, and I think it must be conceded that they are the agencies which have blazed the trail in the field of public-utility regulation, and not the Interstate Commerce Commission. When analyzed it will be found that the Interstate Commerce Commission has very limited powers of regulation, compared to those exercised by the States. While preserving to the various States their sovereign right to regulate their own internal commerce and its facilities, I believe the antitrust laws should be loosened up and the railways allowed to consolidate under either State or National holding companies, thus enabling all of the East and West railway lines to merge under the ownership of three or four ocean-to-ocean systems, and likewise the North and South lines to merge into one or more Great Lakes-Gulf systems. Possibly one great national holding company might be created to hold or own

them all. This would enable the system or systems to adequately provide for the weaker lines, which now are unable to meet their financial obligations without rate increases that are not needed by the strong lines, and it would also enable the system to carry necessary extensions built into new territory until the country served becomes sufficiently developed to make the investment profitable.

Such an arrangement would prevent the wasteful duplication of investment and facilities which now takes place and forever eliminate the railroad receiverships, some of which have been honest and others criminal, from which it follows that thoroughgoing protection would be afforded to the public and the investors in railway stocks and bonds, while at the same time insuring the highest form of railway credit. But in perfecting this organization it should be provided that all of the railway corporations making up these merged systems or system shall remain subject to their present charter obligations in all matters relating to taxation, rates, and service wholly within the various States. This will retain to the States the same dignity they now enjoy. Transportation is an exceedingly important function of government—State government as well as National—and therefore the States should not be asked to relinquish this sovereign right. The State must be considered in any plan devised for consolidation and Nation-wide operation. Otherwise, if the States are made subordinate in power and dignity to the railways, as in the Texas and Illinois rate cases, the failure of the end sought will be foreordained from the start.

The CHAIRMAN. Mr. Shaughnessy, your contention is that water competition should be permitted to operate to the advantage of the public?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. Without attempting upon the part of legislation or regulation to enable the rail carrier to compete with it?

Mr. SHAUGHNESSY. Yes, sir; I think that would be the wisest policy, Senator.

The CHAIRMAN. That is all. Senator Cummins, have you any questions?

Senator CUMMINS. I had intended to put the suggestion that I am now about to make before some of the witnesses when we were meeting at San Francisco, but the time there did not seem to be sufficient; therefore I omitted it.

Your insistence is that Congress should declare that in no case shall a common carrier charge more for the shorter than the longer distance, the same direction, over the same line?

Mr. SHAUGHNESSY. Yes, sir.

Senator CUMMINS. That is the equivalent of a legislative declaration that it is unreasonable and unjust to charge more for the shorter than the longer distance. You are a lawyer, I take it, from your very careful review of these decisions?

Mr. SHAUGHNESSY. No, sir; I do not qualify as a lawyer.

Senator CUMMINS. Well, it is perfectly plain that you have a very fair and adequate conception of the law upon the subject. And that prompts me to ask you this question: How far, in your opinion, could a court review that declaration on the part of Congress?

Mr. SHAUGHNESSY. An absolute long-and-short-haul amendment?

Senator CUMMINS. Yes.

Mr. SHAUGHNESSY. Well, in my judgment, the rule of Congress would be supreme on the subject. The United States Supreme Court has so stated in Intermountain Rate Cases (234 U. S., 476).

Senator CUMMINS. Could it be said that there is no case in which it is reasonable and fair to charge more for the shorter than the longer distance?

Mr. SHAUGHNESSY. Well, now, I can not imagine such a case.

Senator CUMMINS. I am not now asking of you whether we have the physical power to say so, but can it be the case that there is no instance in which the higher charge for the shorter distance would be reasonable?

Mr. SHAUGHNESSY. No; I do not believe there is any such case as that, Senator.

Senator CUMMINS. In order to justify a positive declaration of that kind it is necessary to have in mind, anyhow, the basis upon which rates should be adjusted and charges made?

Mr. SHAUGHNESSY. Yes.

Senator CUMMINS. What is the basis you have in mind, what is it that controls, or ought to control, a carrier in fixing rates?

Mr. SHAUGHNESSY. Well, of course, the controlling thing that they consider is the commercial conditions, and it is pretty difficult to say to a railroad that they shall not consider those commercial conditions. In fact, they will consider the commercial and competitive conditions in so far as they are not prohibited by law, and when you come down to the consideration of the commercial and competitive conditions, why the rates vary necessarily with the different circumstances and conditions met, and I do not think that the traffic manager undertakes to say that each and every rate, or he can not tell, at least, that each and every rate is compensatory. That is, the system of rates under which we are operating at the present time

Senator CUMMINS. Why are you satisfied with a declaration that there shall be no greater charge for a shorter than the longer distance? Why do you not insist that there shall be a lesser charge for the shorter distance?

Mr. SHAUGHNESSY. A proportional rate, according to mileage.

Senator CUMMINS. I did not say that, but I put it a little more broadly than that. Why do you not come before us and insist that in making rates in this country there shall be a lesser charge for the shorter distance; if it can be said there shall be no greater charge for a shorter distance, why can it not be said there shall be no lesser charge for a longer distance?

Mr. SHAUGHNESSY. I think perhaps we are entitled to mileage distance rates by reason of our location being the shorter included within the longer, but we have felt that we would be willing to get along very nicely on the basis of equal rates; the business of our country is largely made up now, that is, the long-haul business, on equal or blanket rates, and it may be—personally I believe the blanket rates scheme must be followed in this country, and I do not know that we can overturn that system of rate making or that it would be wise to do so.

Senator CUMMINS. But when Congress is asked to declare a positive rule upon that subject—that is, a rule beyond the decree that all rates must be fair and reasonable and just and nonconfiscatory—it ought to declare the true rule, if it can find it. Now, it is apparent to me

that the declaration that there shall be no greater charge for the shorter distance than the longer is a mere arbitrary declaration; that we must go further and discover, if we can, the true rule.

Mr. SHAUGHNESSY. Well, that involves mileage rates, I should imagine, and mileage rates might work all right on certain traffic, perhaps manufactured articles westbound, but when we come to work the same rule eastbound, I doubt very much whether it would work so beneficially, because eastbound it is necessary to have as near a blanket rate on the products of the soil and the products of the forest and the products of the mines as you can get in order to enable the producers to get into the various markets on an equality.

Senator CUMMINS. But your argument, carried to its logical end, condemns all blanket rates, as well as greater rates for the shorter distance than the longer one, does it not?

Mr. SHAUGHNESSY. I did not mean for my statement to condemn the blanket-rate system. I favor it for long-haul interstate traffic, because it insures equal opportunities for markets and community development.

Senator CUMMINS. I know you appear to be satisfied with the blanket rate, but the argument in and of itself that Congress should establish a positive rule upon the subject seems to me to lead to the conclusion that there should be no blanket rates. Is there not in your mind after all, and in the mind of everyone who argues in favor of an absolute declaration upon this subject the idea that the charges of a carrier for its service should be proportionate to the cost of the service?

Mr. SHAUGHNESSY. Yes; it is in a general way fair to base the rates according to the length of the haul and cost of making it, and matters of that kind.

Senator CUMMINS. If that is the real foundation for the argument in favor of a positive declaration on this subject, does it not seem to you that the argument destroys itself, in that if we follow that plan we must give to some tribunal the jurisdiction to ascertain what is the cost of the service, and to apportion or fix the rates accordingly?

Mr. SHAUGHNESSY. That jurisdiction is already placed, as I understand it, Senator, in the hands of the Interstate Commerce Commission.

Senator CUMMINS. For instance, a positive rule upon this subject, according to your claim, would seem to imply that a railroad might charge as much for carrying a carload one mile as for carrying it a thousand miles?

Mr. SHAUGHNESSY. Of course literally construed that might be the basis of what we ask for, but I do not think it would ever be carried to any such extreme as that, Senator.

Senator CUMMINS. What you really want us to say is, I assume, that no greater charge shall be made for the lesser distance, but that the commission ought to go further and if it finds the shorter haul should have a lesser charge, that then it shall so establish it?

Mr. SHAUGHNESSY. Yes. The commission, I think, has that power at the present time.

Senator CUMMINS. Yes, but do you not see that that after all puts up to the commission the ascertainment of the reasonableness of the two rates?

Mr. SHAUGHNESSY. Yes.

Senator CUMMINS. The through rate and the intermediate rate?

Mr. SHAUGHNESSY. Yes.

Senator CUMMINS. And I can not see any reason for cutting off the jurisdiction of the commission at just the point which you suggest, namely, that the charge shall be no greater for the lesser distance. In order to be logical it would seem to me that we ought to say that the charges for this business ought to be made according to the cost of doing business, without regard to the compulsion, if you please, of competition, either at the water's edge or in the interior when brought about by competition of railways alone.

Mr. SHAUGHNESSY. I suppose you have in mind that in order to make that work on the products of the soil, the forest, and the mines from our section, that if, instead of the blanket rates we now carry from Denver to all eastern points we should be required to graduate the rates upward as distance increases it doubtless would restrict our markets and production.

Senator CUMMINS. I have no settled conviction upon the question. It is the most difficult one which I know of relating to the adjustment of rates, but what you want is to say that competition shall not be regarded to the extent of reducing the terminal rate below the intermediate rate?

Mr. SHAUGHNESSY. That is the point; yes, sir.

Senator CUMMINS. But if we do that, how can we stop short of saying that competition shall not be regarded sufficient to reduce the terminal rate below a fair proportion, or to reduce the terminal rate below a point that will establish a fair relation between the intermediate point and the terminal point?

Mr. SHAUGHNESSY. Well, if we have an absolute long and short haul provision there would not be any occasion of that kind, would there, Senator?

Senator CUMMINS. Yes, but we have got to find some solid ground, some principle upon which to base a declaration of that kind. We have said that all rates shall be fair and just and reasonable. We have given that to the commission. Now we are taking away from the commission a part of the jurisdiction which we formerly conferred and establishing a legislative status, and when we do that we have got to establish it upon some principle, it would seem to me. And that is the point that has perplexed me in regard to an absolute long and short haul clause. I call it to your attention so that you can reflect upon it. I do not know whether there is any merit in it or not.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Sims.

Mr. SIMS. Let Mr. Esch proceed first.

Mr. ESCH. I have a few questions to ask. In your statement you said, Mr. Shaughnessy, that on eastbound traffic the rates were blanketed east of the Denver line?

Mr. SHAUGHNESSY. Yes.

Mr. ESCH. And the railroads of the intermountain and western section justifies the blanketing of rates on agricultural products on the ground that it afforded to your farmers, horticulturists, and so on, a better market?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. Then you cited the fact that wool, however, did not receive the blanket rate, but that for a ton, that the carrier charged

\$20 a ton from San Francisco to Boston, if I remember rightly, and for Winnemucca, which is east of Reno, it was \$38 a ton?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. How did the carriers justify that discrimination? That is a product of the soil anyway?

Mr. SHAUGHNESSY. They justify the maintenance of the \$20 rate from San Francisco upon the ground that they are compelled to meet the Australian competition, upon the wool coming from Australia, all-water to Boston, and they claim that it is necessary to have a rate of \$20 a ton from San Francisco and other Pacific coast ports to Boston, all-rail, in order to meet that Australian water competition.

Mr. ESCH. Does that amount to a differential of \$18 a ton?

Mr. SHAUGHNESSY. It certainly does.

Mr. ESCH. Do they make any discrimination as to sugar?

Mr. SHAUGHNESSY. No; there is no discrimination as to sugar.

Mr. ESCH. Why would not the same argument apply as to the Hawaiian Islands?

Mr. SHAUGHNESSY. It might. It is an example that is in point, which is absolutely in point, but they have never done so. The sugar goes upon a basis, I think, of \$13 a ton all territory east of Denver to Chicago and \$15 a ton east of Chicago territory, and when you get down in Louisiana territory where sugar is produced, it goes up to \$17 a ton.

Mr. ESCH. You gave a very elaborate review of the Shreveport cases and cited also the Illinois rate cases and the South Dakota express rate cases, showing conflicts between the States and the Federal commissions. What is your opinion of this recommendation, made in the last report of the commission?

That without abdication of any Federal authority to finally control questions affecting interstate and foreign commerce the commission be expressly authorized to cooperate with State commissions in efforts to reconcile upon a single record the conflicts between the State and the interstate rates.

Mr. SHAUGHNESSY. I agree with that policy of cooperation.

Mr. ESCH. In your opinion when the sitting of a State commission with the Federal commission would not cause a conflict of authority?

Mr. SHAUGHNESSY. There probably would be conflicts to some extent, but not greatly so, Mr. Esch. I believe practically all those situations could be pretty well ironed out by the various State commissions and the Interstate Commerce Commission sitting together. However, I do not think that the jurisdiction of the State over its own internal commerce should be taken from it, because of that cooperation. In fact I think the jurisdiction of the various States should be made entirely clear on that point, that it is not to be abrogated or usurped, because unless that is done we are going to create an awful lot of jealousy and opposition in the minds of the people at large, and as a matter of wise policy I do not think you can afford to incur that, nor can the Interstate Commerce Commission and the railroads reasonably afford to incur that opposition and that hostility, and I think you can better settle that by providing specifically that the States shall retain their full jurisdiction over internal commerce and its instrumentalities, and then go on and provide for making effective the commendation of the Interstate Commerce Commission for the cooperation of the interstate and the State tribunals on matters that affect discrimination.

Mr. ESCH. You think, then, that the reconciling on a single record of these differences between the State and Federal authorities over rates should be encouraged?

Mr. SHAUGHNESSY. I do; yes, sir.

Mr. ESCH. Of course you would nevertheless recognize the supreme control or power of the Interstate Commerce Commission?

Mr. SHAUGHNESSY. Yes, sir. Subject to the qualifications and safeguards I just referred to that would be the fundamental rule.

Mr. ESCH. Just one other question, with reference to efficiency. I think you have stated, if I recollect your figures rightly, that the dead-weight tonnage of the average passenger train now is 550 tons?

Mr. SHAUGHNESSY. Yes; that is, figuring on the all-steel equipment.

Mr. ESCH. And containing six cars?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. With a passenger capacity of 150?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. But an average patronage of 54 to the train?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. And you deduce from that that that would mean 10 tons dead weight per passenger?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. And I infer from what you said that that was inefficiency?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. But how would you overcome that? If the people insist that they should be carried in steel cars, would you want to go back to the wooden shells that we used to have, with the frightful disasters of telescoping and burning people in the wrecks? How would you overcome that?

Mr. SHAUGHNESSY. My view on that may be somewhat different, Mr. Esch. In the first place I do not believe that the all-steel equipment has provided an absolute safety factor. Of course it is somewhat more safe than the old wooden cars, but not greatly so. For instance, to-day the all-steel equipment, when you are in a very severe collision, telescopes and breakup, perhaps not to the same extent that the old wooden equipment did; but as to the fire hazard, the fire hazard in the old days came from the use of lamps and gas; to-day that is largely removed by the use of electrical equipment, and it is my contention that wooden equipment could be substituted, especially at this time, to great advantage. It is much cheaper than the steel materials, and it is among the classes of material that have not greatly increased in price.

Mr. ESCH. Your views run counter to the repeated declarations of the Interstate Commerce Commission, do they not?

Mr. SHAUGHNESSY. I am not in accord with them on that, because the operating results do not show the things that were hoped to be accomplished by steel equipment.

Mr. ESCH. In their recommendations they say that the use of steel cars in passenger-train service be required, and that the use in passenger trains of wooden cars between, or in front of steel cars, be prohibited.

Mr. SHAUGHNESSY. Yes; that is true.

Mr. ESCH. I think that the reports of the Chief of the Division of Safety Appliances in the Interstate Commerce Commission, Mr. Belknap, all seem to trend one way, of the increased safety to the traveling public resulting from the use of steel cars.

Mr. SHAUGHNESSY. Yes.

Mr. ESCH. I appreciate what you say, that the use of steel cars adds greatly to the dead-weight tonnage of the train, necessitating heavier locomotives, and of course heavier rights of way?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. But the public will insist on the continuance, in my opinion, of the steel-car equipment.

Mr. SHAUGHNESSY. Perhaps they feel safer in it. I think there are equally good reasons, Mr. Esch, and better results to be obtained by a wise and reasonable use of both steel and wood in reducing the present excessive dead weight. I know, I am very sure it will be found after all equipment is converted to steel, that we have been hauling around a lot of dead weight, aggregating 10 tons per passenger in our passenger equipment, and we will later on go back to a very much lighter standard of car than that. The increased safety factor that we are all striving for at the present time will be obtained through other methods, will be obtained through the use of automatic train stops, which will amount to preventing the collision rather than building battleship equipment to withstand the shock when the collision occurs. Automatic train stops will prevent the collisions and loss of life, and their adoption, which should be required forthwith, will insure the maximum of safety and the economical use of light equipment.

Mr. ESCH. The commission has recommended the use of automatic stops; there are train-control devices, and our committee in the House has recommended such a bill to the House in a former session.

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. Mr. Chairman, shall I proceed?

The CHAIRMAN. Yes, sir.

Mr. SIMS. I do not know that I understood that statement in the reply you made to Mr. Esch. Is it necessary to carry wool from San Francisco, or some point on the Pacific Ocean, to New York, at \$20 a ton in order to meet the competition in wool from Australia?

Mr. SHAUGHNESSY. That is their justifying reason for the maintenance of the wool trade.

Mr. SIMS. What is the reason given by the railroads themselves?

Mr. SHAUGHNESSY. By the railroads; yes, sir.

Mr. SIMS. Now suppose we shipped a ton of wool, or ten or a hundred tons from San Francisco to New York or Boston, that goes at \$20?

Mr. SHAUGHNESSY. Yes, sir; when shipped in carloads.

Mr. SIMS. Suppose you make the same shipment from Salt Lake City, what would it go at?

Mr. SHAUGHNESSY. The freight is somewhat less from Salt Lake City. I do not just remember.

Mr. SIMS. Well, from your own State, from Reno?

Mr. SHAUGHNESSY. Take it from Winnemucca, our average representative point, \$38 a ton.

Mr. SIMS. Eighteen dollars a ton more for a ton of wool of the same kind going over the same road from Winnemucca to New York or Boston than from a Pacific Ocean point?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. Then wool from the interior, Winnemucca, shipped from there, can not compete with Australian wool in the eastern markets?

Mr. SHAUGHNESSY. It has been able to because of the demand for wool.

Mr. SIMS. How can it do it if it is necessary for the wool shipped from California to go at \$20?

Mr. SHAUGHNESSY. That would be true in most commodities, and it would be true in wool, too, if there was not a very keen demand for it; but for a number of years the Nevada wool has always been in demand, and there has always been a market for it, therefore it did not prevent its moving.

Mr. SIMS. This Australian wool is not shipped from San Francisco, is it?

Mr. SHAUGHNESSY. No, sir.

Mr. SIMS. It is shipped from Australia?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. There is no railroad connecting with the Atlantic coast from Australia, is there?

Mr. SHAUGHNESSY. No, sir.

Mr. SIMS. Then how is it enabling a railroad company in the United States to meet water competition in the United States by giving them a rate against a foreign country?

Mr. SHAUGHNESSY. I do not think it is at all justifiable.

Mr. SIMS. I want to find the ground—upon what grounds it was permitted by the Interstate Commerce Commission, if they have any power to control it.

Mr. SHAUGHNESSY. Other than the Australian competition, I do not know, sir.

Mr. SIMS. I asked that simply because I wanted to get it clearly in my mind. Is that correct, that from the Pacific points, I mean from —

Mr. SHAUGHNESSY. San Francisco.

Mr. SIMS. From Pacific coast points, both in the interior or on the coast, that all rates are the same for points east of Denver?

Mr. SHAUGHNESSY. Well, not all, but largely the products of the soil; the principal products of the soil are upon the same basis after you pass Denver going east, into all markets—practically all markets.

Mr. SIMS. It does not matter how much beyond Denver it may be?

Mr. SHAUGHNESSY. No, sir; for instance, I might illustrate that by taking the rate on oranges, which are raised in large volume in California. The rate from California points to Denver is \$1.15, and to all points east from Denver, including Atlantic coast terminal points, it is \$1.15.

Mr. SIMS. From California?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. And the railroads actually haul oranges from California, I mean to the territory east of Denver, for nothing?

Mr. SHAUGHNESSY. Well, I do not look at it quite that way.

Mr. SIMS. Is it not a fact, though, if they charge the \$1.15 to Denver, and do not charge over that to Chicago, Boston, and New

York, if they are hauling it, if it is going the same way, if the rest of the haul is not absolutely free to the owners of the oranges or to the purchasers of them?

Mr. SHAUGHNESSY. No; I hardly look at it that way.

Mr. SIMS. Does he pay any more money?

Mr. SHAUGHNESSY. No, sir; he does not.

Mr. SIMS. I mean in the money sense—the railroad, or the shipper, or the purchaser?

Mr. SHAUGHNESSY. I might say yes to your question, in the abstract, but you must take into account the justifying conditions upon which they have based the initial rate before you can say it is done for nothing.

Mr. SIMS. Well, as far as the railroad haul is concerned from Denver east of that box of oranges, or that carload of oranges, from there on the cost is absolutely nil, is it not?

Mr. SHAUGHNESSY. Yes, sir; that is true.

Mr. SIMS. The railroad does not get one cent more for carrying them beyond there than if they stopped at Denver?

Mr. SHAUGHNESSY. No, sir.

Mr. SIMS. Then is that not absolutely a free service, so far as the railroads are concerned?

Mr. SHAUGHNESSY. Yes, taken in that light.

Mr. SIMS. It does not increase revenues?

Mr. SHAUGHNESSY. No, sir.

Mr. SIMS. But it does increase expenses, does it not?

Mr. SHAUGHNESSY. No, sir; I do not see it that way.

Mr. SIMS. It has got to take a train on from Denver to Chicago or New York, and get no more for carrying, then what is the reason it does not increase transportation expenses on that carload of oranges?

Mr. SHAUGHNESSY. Of course, that may be one way of looking at it.

Mr. SIMS. Is it not a fact?

Mr. SHAUGHNESSY. Well, I would not say it was. Of course, it is the volume of business that the rate is fixed upon in the first instance, and they figure there will be a volume, say, of 50,000 cars of oranges per year, which I think there is. On that volume they could make a rate of \$1.15 a hundred, or \$23 a ton to all territory, beginning at Denver, and serving all points east of Denver, and including the Atlantic coast points.

Mr. SIMS. They figure that on the entire volume of business they can make a profit?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. Then it must necessarily mean that they must charge more than it is worth for part of the shipment and less than it is worth for part of the shipment?

Mr. SHAUGHNESSY. Naturally there are some points in there that are lower and some higher. There is another point in there, that is the average point, I suppose, to which the rate, if separately considered, might be about right, but this does not fairly state the case, because when the entire movement is averaged the rate is profitable and lower than it might otherwise be if the production and consumption was restricted by mileage rates.

Mr. SIMS. Is that not purely an arbitrary matter? Do they not determine that in and of themselves?

Mr. SHAUGHNESSY. Yes, the carrier originated the system.

Mr. SIMS. It is not a compelling arrangement?

Mr. SHAUGHNESSY. No; it is, as before stated, determined by the carriers themselves, but it is predicated upon the ground that it would be beneficial to the producing and shipping public in furnishing them the widest market possible for their products.

The CHAIRMAN. And also beneficial to the consuming public?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. By widening the area of the consumption?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. I am not at all controverting that fact, but I am trying to get at the operating revenues and operating expenses of the railroads. They claim their expenses are ever on an increase for some reasons.

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. On account of the cost of labor and material. But I want to know if it is not a fact that on the part of a through shipment from the Pacific coast, through Denver to Boston and New York, if their expenses are not increased to the extent of all additional expenses incurred in taking that freight through that blanket zone of 2,000 miles, is it not, or about?

Mr. SHAUGHNESSY. Well, I would not say it increased their expenses, because each and every carrier participating in the haul gets its pro rata of the \$23 a ton earnings coming off the Pacific coast.

Mr. SIMS. But suppose that these roads did not carry any oranges beyond Denver?

Mr. SHAUGHNESSY. Yes.

Mr. SIMS. But did carry other freight in that long 2,000-mile haul that they did get revenue for, would that not increase the revenues as a whole?

Mr. SHAUGHNESSY. Yes; that is true looking at it in that light, but blanket rates promote the widest and cheapest production and consumption and should be extended to all long-haul interstate traffic.

Mr. SIMS. In other words, they are carrying that freight, or portions of it, 2,000 miles, absolutely for nothing, so far as revenues to the railroads are concerned?

Mr. SHAUGHNESSY. Yes; predicated upon the example that you put there that would be true, but yet that is not comparable with the theories of rate blanketing.

Mr. SIMS. The facts are, generally speaking, that the rates are blanketed all over the country?

Mr. SHAUGHNESSY. Yes, sir; on products of the soil.

Mr. SIMS. Then there are blankets everywhere?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. In other words, then, they establish arbitrary zones or districts?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. And the freight rate, regardless of the cost of carrying the freight, the absolute cost, regardless of the expenses, the wear and tear of the machinery, or anything of that sort, the freight rate is one charge clear through?

Mr. SHAUGHNESSY. Yes, sir; the blanket rate covers it all.

Mr. SIMS. So that the ordinary dealer in New York can sell his oranges from California just as cheaply as the man who lives on the western edge of the 2,000 mile blanket?

Mr. SHAUGHNESSY. That is true.

Mr. SIMS. Therefore he does not pay anything for the upkeep of that railroad on that 2,000-mile haul?

Mr. SHAUGHNESSY. Well, I think he does. Of course, he does not in the sense in which you put it, but that is comparable with the postage-stamp rate, where distance is disregarded and all are given an equal rate.

Mr. SIMS. Absolutely; I was going to ask you about that. The railroads, in order to make money at all, must charge such a rate upon all their business as makes it all profitable?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. That is, taken as a whole. Now, then, such a system of doing business, where is there any reason or common sense in competition of any kind or sort? I mean of inland competition, railway competition among each other?

Mr. SHAUGHNESSY. There should not be any in my judgment. I think that is a myth and a mistake, and that the antitrust laws in in that regard should be loosened up, and the consolidation of railroads and traffic agreements should be regulated but not prevented.

Mr. SIMS. Do you think privately owned property, privately owned business, privately owned public utilities should not be subject to the laws of competition that exist between other private individuals, producers and business men?

Mr. SHAUGHNESSY. No; competition is wasteful and should not be permitted under an effective system of regulation.

Mr. SIMS. In other words, in public utility service it should not be controlled by competitive methods?

Mr. SHAUGHNESSY. No; that is my idea of it.

Mr. SIMS. But should be controlled by law?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. By the agents of Government?

Mr. SHAUGHNESSY. That is it.

Mr. SIMS. As provided by law of the Government?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. When freight had to go from New York to San Francisco all water, around South America, could it be carried on the whole as cheaply as it can through the canal?

Mr. SHAUGHNESSY. No; not nearly so cheaply.

Mr. SIMS. In other words, the distance has been shortened about 7,000 or 8,000 miles?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. The canal is built at public expense, is it not?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. The general taxpayer pays that?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. Do you think the public taxpayer ought to be called upon to create facilities for a naturally favored point, additional facilities like water terminus, do you think that these facilities should be created out of public taxation and then that part of the very people who pay these taxes, and must pay them, until the canal gets to be self-supporting, should these people suffer by an additionally reduced rate from a water point?

Mr. SHAUGHNESSY. No, sir; that is the argument that we make.

Mr. SIMS. You believe then that in spending the public money to increase water facilities that the competition growing out of increased water facilities should be prohibited—I mean additional competitive, additional reduced rates, by anything except water-borne commerce, that it should be provided in the act, or in some other way, that no reduction, that is other than water rates, should take place by reason of this increased water facility, brought about through the expenditure of public money?

Mr. SHAUGHNESSY. Yes, sir; I think that would be wise public policy.

Mr. SIMS. Well, has it not been to some extent, at least the argument presented to Congress, almost continuously, that water routes should be so improved as to furnish the greatest amount of competition to the railroads so as to force the railroads, by using the taxing power of the country, to reduce their rates to competitive water points?

Mr. SHAUGHNESSY. Yes, that has been the argument but the money expended has not developed water transportation.

Mr. SIMS. So then you think that all water competition that is created chiefly for the purpose of reducing railroad rates is uneconomic, illogical and unjust to the people as a whole?

Mr. SHAUGHNESSY. Yes, sir; that is our position, Mr. Sims.

Mr. SIMS. Is it not a just and proper position?

Mr. SHAUGHNESSY. It is, I think, absolutely so, and I have endeavored to demonstrate this fact in my statement.

Mr. SIMS. The Illinois Central runs from Chicago to New Orleans. It touches the Mississippi River at certain points. Now if the Mississippi River should be so improved as to enable river-borne commerce between competitive points on the Illinois Central to be carried at greatly reduced rates, then will it not have to increase its rates to portions of its territory where this water competition does not exist, unjustly, unreasonably and unfairly?

Mr. SHAUGHNESSY. It would if it wanted to continue making the same amount of earnings. If necessary to make the same amount of earnings, they would probably pursue that policy. But that is the very thing, I think, which should not be permitted.

Mr. SIMS. How are you going to keep Congress from doing as it pleases where it has jurisdiction?

Mr. SHAUGHNESSY. I do not know.

Mr. SIMS. Do you not think there have been vast sums of money spent to bring about merely potential water competition where none really resulted, I mean in the improvement of rivers especially?

Mr. SHAUGHNESSY. That is possibly true, but I do not know of my own knowledge, Mr. Sims.

Mr. SIMS. Did you ever examine the effect of the money spent on the Trinity River in Texas?

Mr. SHAUGHNESSY. No, but I have heard about it.

Mr. SIMS. I will not ask you that if you have not examined it at all. That is all.

Mr. ESCH. There are just one or two questions. On the commerce from the Pacific coast and intermountain country, which is blanketed east of the Denver line, is the right of diversion granted to that traffic?

Mr. SHAUGHNESSY. I am not sure. I should have to look that up.

Mr. ESCH. Is it not true as to oranges and citrus fruits?

Mr. SHAUGHNESSY. I think it is true as to oranges.

Mr. ESCH. That is a valuable right.

Mr. SHAUGHNESSY. Yes, that is true.

Mr. ESCH. Do you think it a wise, economic policy for the Government, after it has invested \$400,000,000 in the construction of the Panama Canal, to seek to get a revenue from the use of the canal sufficient to pay operating expenses and interest on cost, if thereby the continental rail rates would have to be reduced, or they lose the traffic from coast to coast?

Mr. SHAUGHNESSY. Well, I think in that connection that the water carriers should be permitted to participate in the movement of domestic traffic from the Atlantic coast to the Pacific coast and from the Pacific coast to the Atlantic coast, reasonably, and that the rates of the transcontinental rail carriers should not be permitted to be reduced to a point that would put them out of business, put the water carriers out of business.

Mr. ESCH. And, on the other hand, you would not want the rates fixed as to put the rail carriers out of business?

Mr. SHAUGHNESSY. No, I think that might very wisely be handled by the governmental departments, the Interstate Commerce Commission on one hand and the Shipping Board on the other, fixing rates that will be fairly satisfactory to both the water lines and to the rail lines, and at the same time not discriminate at interior points.

Mr. ESCH. To the end that both might live?

Mr. SHAUGHNESSY. Yes, sir; to the end that both might live and prosper.

Senator CUMMINS. Then the water rate would have to be a minimum rate in order to accomplish that?

Mr. SHAUGHNESSY. The rail rate, did you say?

Senator CUMMINS. No, if you regulate the water transportation so that it will not drive the railroads out of business, there would have to be prescribed a minimum rate as well as a maximum?

Mr. SHAUGHNESSY. Yes, that is true; I think you are right on that. I think that would be wise. I think it would also be wise in affording protection to the water carriers, who do go into the business, and who, after the expenditure of a great deal of money, perfect a very high grade of water service between the two coasts—now, then the establishment of a minimum will give to such a carrier the protection to which he should be reasonably entitled and keep from the service the so-called tramp steamers and others that jump in and jump out of the established trade, at unreasonably low rates, thus disrupting the regular service.

Mr. ESCH. Do you not think that the superior character of the rail service will give to the railroads a fair proportion of the business, even if the water carriers are permitted to take care of themselves?

Mr. SHAUGHNESSY. Yes, I really do, Senator; there is no question about that. The superior facilities of the railways and their opportunity to reach industrial and warehouse tracks and do the switching of the traffic right direct to and from industries and commercial houses, which the water carriers can not do, gives the rail carrier a very decided advantage from a service standpoint. But if the railroads can not meet water competition without long and short haul

rates, the traffic should go to the water carriers, because that should be the distinguishing line between what is rail and water traffic.

Mr. SIMS. I forgot one question I want to ask about the steel car. Should not the passengers who ride in a steel car, on account of its supposed insurance feature, its greater protection, greater safety, why should they not pay for that just the same as insurance comes in any other way? Why not keep the steel car and let those whose lives and limbs are saved by it pay for it like they would for any other sort of insurance?

Mr. SHAUGHNESSY. That is one way; that leads to the question of classification of passenger traffic.

Mr. SIMS. Increase the rates wherever the expense of the service is increased.

Senator CUMMINS. Do you know any practical way in which you could get a passenger to ride on a steel car or a wooden car?

Mr. SIMS. If you are going to carry both on the same train?

Senator CUMMINS. It would be worse than to have the entire train wood to put the steel cars in the same train.

Mr. SIMS. They have whole trains of steel coaches.

Mr. ESCH. That would double the equipment and increase the cost.

Mr. SHAUGHNESSY. The question comes back to preventing the collisions. Unless this is done, frightful losses of life will continue because of collisions between through all-steel car trains and local wooden-car trains. The order of the Interstate Commerce Commission excluding the wooden car from the steel-car trains affords protection to these trains, but none at all to the local wooden-car train, both of which are operated over the same tracks. Railroad officials, engineers, and trainmen are the most exacting disciplinarians and the closest observers of rules and regulations to be found in any line of industry, but of course they are not infallible. Surprise tests made against train and engine men show a 100 per cent observance of danger signals over long periods, but the time comes when, through human fallibility of one kind or another, there is a nonobservance and there is a collision and scores of lives are snuffed out. No time should be lost in passing and enforcing an "automatic train stop" law. Its adoption will supplement our present highly trained and efficient railway operating forces and afford the maximum of safety from collisions, while at the same time paying for itself many times over in the saving effected in loss of life and property.

The CHAIRMAN. Mr. Doremus, have you any questions?

Mr. DOREMUS. Yes, sir. I take it that in the answer you made to Mr. Esch's questions, you are not in favor of eliminating water competition?

Mr. SHAUGHNESSY. No; I am in favor of promoting it in every legitimate way, and of preventing the rail carriers from destroying it as they have in the past.

Mr. DOREMUS. You do not believe that from a commercial and economic point of view, our investment in the Canal is an unwise one, do you?

Mr. SHAUGHNESSY. I think it was wise; I think it was exceedingly wise, and slow moving low rate domestic traffic should move through it freely from coast to coast, without the restriction of long-and-short-haul rail rates.

Mr. DOREMUS. As a general proposition you would favor the healthy stimulation of water transportation, would you not?

Mr. SHAUGHNESSY. Yes, sir; that is our position.

Mr. DOREMUS. I think that you said the rail rates on oranges from Los Angeles, or other Pacific point, to Boston, is the same as the rate from the Pacific coast point to Denver?

Mr. SHAUGHNESSY. Yes, sir; that is true.

Mr. DOREMUS. That it was \$1.15 a box?

Mr. SHAUGHNESSY. One dollar and fifteen cents a hundred, or \$23 a ton.

Mr. SIMS. It is not by the box?

Mr. SHAUGHNESSY. No; by the hundred.

Mr. DOREMUS. Then it would cost no more to haul a box of oranges from the Pacific coast to Boston than from the Pacific coast to Denver?

Mr. SHAUGHNESSY. No, sir; figured on the average, the cost would be the same.

Mr. DOREMUS. And that low rate from the Pacific coast to Boston, as I gather it from your testimony, is to enable the producers in California and other Western States to meet the Australian competition?

Mr. SHAUGHNESSY. That would be so on wool. That was on wool but not on deciduous fruits.

Mr. DOREMUS. No; I have reference to wool.

Mr. SHAUGHNESSY. Yes.

Mr. DOREMUS. That being so, is it not fair to assume that the people of Denver, of that section of the country, are penalized in order to enable the producers of the West to meet the Australian competition?

Mr. SHAUGHNESSY. Yes; that is the answer to that, that the wool producers at interior points are penalized, I do not know how much, but they bear the burden of the difference which lies somewhere between the \$20 and the \$38 rates which would be represented by a reasonable rate if the discrimination was removed and the charges made uniform.

Mr. ESCH. You were discussing the Shreveport case and the water traffic in the South, especially on the Mississippi?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. I think you cited figures, namely, that whereas 10 years ago the water-borne traffic on the lower Mississippi was 600,000 or 800,000 tons—

Mr. SHAUGHNESSY. Eight hundred and some odd thousand.

Mr. ESCH. In the last year you cited it had been reduced down to 87,000 tons?

Mr. SHAUGHNESSY. Yes, sir.

Mr. ESCH. And you deduce from that fact that the commission should therefore ignore water competition in that region, just as it ignores water competition now on the coast?

Mr. SHAUGHNESSY. Yes, sir; that is my position.

Mr. ESCH. And therefore the long and short haul clause should be made effective in that region?

Mr. SHAUGHNESSY. Yes, sir; that is my deduction. And, going further there, I wished to exemplify in a general way the entire Southern States situation, which is in substantially the same condition along the Mississippi River and the Gulf of Mexico, so far as the long and short rates are concerned.

The CHAIRMAN. I want to ask you just a few questions. What was your position before you became a member of the Nevada State Railroad Commission?

Mr. SHAUGHNESSY. My occupation has been that of a railroad man, a practical railroad man.

The CHAIRMAN. How long were you in that business?

Mr. SHAUGHNESSY. I followed it for 15 years prior to the time I went on the railroad commission of Nevada and have been on the railroad commission of Nevada during the past 10 years.

The CHAIRMAN. You were at one time assistant superintendent, I believe, of the Southern Pacific Railroad?

Mr. SHAUGHNESSY. I was assistant superintendent of the Southern Pacific Co. in Nevada for about three years.

The CHAIRMAN. Does the same system prevail with reference to the transportation of products from the intermountain region to the East that prevails from the East to the intermountain region with reference to the long and short haul?

Mr. SHAUGHNESSY. No; there is a marked difference there. On the eastbound movement we have the advantage of the blanket rate on practically all products to all eastern markets, but on westbound products, why, we suffer the long and short haul differential.

The CHAIRMAN. Now, on eastbound traffic, are there any places between Nevada, we will say, and New York to which there is a larger charge for the transportation of products from Nevada to those points than there is to New York?

Mr. SHAUGHNESSY. No, sir. Take it on eastbound traffic——

The CHAIRMAN. Then with reference to eastbound traffic there is no discrimination?

Mr. SHAUGHNESSY. No, sir; except as to wool.

The CHAIRMAN. Such as you complain of with reference to westbound traffic?

Mr. SHAUGHNESSY. That is true, the eastern shippers and consumers of Indiana, Ohio, Pennsylvania, and New York, intermediate to the Atlantic coast terminals, are not burdened with back haul charges on eastbound traffic, such as we are subjected to on westbound traffic.

The CHAIRMAN. Now with reference to the cost of passenger transportation, the tremendous weight of the interstate trains, is their weight in excess of the purely State trains, or the trains that mainly accommodate local traffic?

Mr. SHAUGHNESSY. Yes; that is true. The trains that are used for the local State traffic, where separate trains are run, usually utilize the older equipment, and that is made up of the old type wooden cars, including steel underframe cars, and is therefore much lighter than the all-steel equipment trains used for interstate service.

The CHAIRMAN. It is lighter both as to the passenger cars and the engine, is it not?

Mr. SHAUGHNESSY. Oh, yes; much lighter.

The CHAIRMAN. And your contention is there is less dead weight carried to each passenger in that case?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. The reason why those rates should be purely in domestic control——

Mr. SHAUGHNESSY. Yes; that is one of the reasons, sir.

The CHAIRMAN. But almost all the interstate trains, of course, carry purely State passengers, do they not?

Mr. SHAUGHNESSY. Yes, sir; that is true. It is growing that way much more all the time. The interstate trains are being used as a medium for the handling of local traffic within the various States, wherever it can be done advantageously. While the average is 6 cars, there are many trains much larger than that; they carry 10, 12, and 14 cars.

The CHAIRMAN. Have you ever inquired as to the character of these trains that carry passengers in England and in Europe at comparatively low rates?

Mr. SHAUGHNESSY. As to the equipment?

The CHAIRMAN. Yes.

Mr. SHAUGHNESSY. Well, my information on that, discussing it with men who have been in Europe, is to the effect that passenger cars run from 15 to 25 tons, and the engines in proportion, and that the service is given conveniently and economically. Those lighter trains necessarily can be operated very cheap and more cheaply, proportionately, than the all-steel extra-heavy trains that we have, the cars of which will average 70 tons each. I think we have gone entirely too far in the matter of weight. We can obtain the same ends in the matter of safety, and do it much more economically, I am sure. I am sure there is a large field for improvement there.

The CHAIRMAN. It would lead to a classification of passenger rates, would it not—first, second, and third class?

Mr. SHAUGHNESSY. Well, that has been discussed.

The CHAIRMAN. You think that would be acceptable to the American people, do you?

Mr. SHAUGHNESSY. I do not know, Senator. No one can tell in the absence of a trial just how the public would accept it, and it might require considerable effort to educate our people up to that scheme, the same as they have in England, where they have first, second, and third class traffic, and where practically all the traffic of England travels second class.

Mr. SIMS. The same in France and Germany, too, is it not?

Mr. SHAUGHNESSY. Yes, and those who need a cheap service secure it by traveling third class. A sufficient classification for this country might be established by a reduction in the fares for day coach service as distinguished from Pullman car and other higher grade train services. This seems reasonable because of the difference in the space and conveniences furnished and the necessity for low fares to meet the changes which are rapidly taking place in the art of transportation. From an operating and service standpoint there is just as much reason for a classification of passenger service as there is for freight service, because of the different character of facilities and services that are furnished.

The CHAIRMAN. As I understand it, so far as this long and short haul is concerned, you wish the law itself to authorize and require the same practice with reference to westbound traffic supplying the intermountain region that is now applied by railroads to eastbound traffic, originating in the intermountain region and supplied to the western and middle west, and the Atlantic coast regions, is that it?

Mr. SHAUGHNESSY. Yes, Mr. Chairman, that is our position exactly.

The CHAIRMAN. As to this blanket system that you have referred to, regarding oranges, for instance. The effect of that system is to enable the people east of Denver to get these fruits at as reasonable a rate as the people of Denver, is it not?

Mr. SHAUGHNESSY. Yes, sir; that is true.

The CHAIRMAN. It widens, therefore, the area of consumption of California products?

Mr. SHAUGHNESSY. Yes; it promotes production and a market for a larger amount of produce; the one leads to the other, of course.

Mr. SIMS. Is the rate on oranges all water to New York or Boston and Atlantic ports and then inland back to Denver the same that it is directly from the Pacific ports to Denver?

Mr. SHAUGHNESSY. I do not believe that they have yet begun to handle any of the fresh fruits by water.

Mr. SIMS. Or any of the other products to which this particular rate applies, whether fruit, lumber, mineral products, or anything else?

Mr. SHAUGHNESSY. What is the question on that?

Mr. SIMS. Is the all-water route, I mean through the canal to New York, say on lumber from San Francisco all water to New York, then the same lumber sent back to, say, west of the Mississippi River or to Denver, would the water haul from the Atlantic to its termination be the same as it is from the Pacific port all rail to Denver, or the blanketed portion that they carry?

Mr. SHAUGHNESSY. No. Take lumber handled from the Pacific coast territory to the Atlantic coast and then shipped by rail inland, it pays the water rate to the Atlantic terminal plus the local rate inland from the Atlantic coast, whatever that may be, and that would meet the rail rate somewhere out in the interior, probably around Buffalo; you might be able to get back as far as Buffalo with that lumber that went around by water and thence by rail inland, but no variation is made in the all-rail charges coming across, none is made because of that fact on east-bound traffic.

Mr. SIMS. Then there is a portion of this blanket covered by the rate you speak of that is not water compelled?

Mr. SHAUGHNESSY. Yes, sir.

Mr. SIMS. That is the point I wanted to get at.

STATEMENT OF J. F. SHAUGHNESSY RESUMED BEFORE SENATE COMMITTEE.

Mr. SCANDRETT. Mr. Shaughnessy, these letters and telegrams seem to be responsive to letters and telegrams sent out by the Intermediate Rate Association. Will you file those letters or copies of those?

Mr. SHAUGHNESSY. The statement that I made here in the opening is the matter to which they are responding.

Mr. SCANDRETT. I know, but you have not furnished for the record the copies of the telegrams and letters sent out by the Intermediate Rate Association to which these are responses. Will you file those?

Mr. SHAUGHNESSY. They are responsive to this general statement which I put in the record at the opening of the hearing. That is all we have at the present time.

Mr. BARTINE. It is all in.

Mr. CAMPBELL. A copy of that letter was the first thing Mr. Shaughnessy put in. It was read in the record.

Mr. SCANDRETT. Some of them refer to letters of certain date and some to telegrams of certain date.

Mr. SHAUGHNESSY. Telegrams were sent, asking for action on the letter and what their views were and to notify us, as the hearing was coming on.

Mr. SCANDRETT. Will you file the telegram, too, or a copy of the telegram?

Mr. SHAUGHNESSY. I will as soon as I can get that, but I have not got it at the present time. Here is a full copy of the correspondence as it went out from the Intermediate Rate Association, and to which these letters and telegrams are in response. This is the letter of the Intermediate Rate Association, reviewing the situation as we understand it to be to-day, with regard to the administration of the fourth section, so called, as amended in 1910, and including with that letter a copy of the House bill 9928, introduced by Mr. Hayden, of Arizona, which is a composite of the Senate bill here under consideration. Also included therewith is a copy of the minority report of Senator Poindexter from the Committee on Interstate Commerce, filed on the Federal compensation act, which has just now passed the Congress.

Mr. SCANDRETT. That letter, you say, has already been put in the record.

Mr. SHAUGHNESSY. I will submit that, and ask that it be introduced, in view of the fact that the point has been raised.

The CHAIRMAN. It is not necessary to print it twice. It may be printed once. If you have already read it—

Mr. SHAUGHNESSY. I have read it into the record.

The CHAIRMAN. It is just a waste of money to print it twice. Let the reference be made to it as having been printed before, if that is the case.

Mr. SCANDRETT. Yes, sir. I was not aware that that had been read into the record. Have you stated, Mr. Shaughnessy, what the Intermediate Rate Association is and when it was organized?

Mr. SHAUGHNESSY. When it was organized?

Mr. SCANDRETT. Yes.

Mr. SHAUGHNESSY. Well, the Intermediate Rate Association is a voluntary organization made up primarily of the representatives of railroad commissions, traffic associations, commercial clubs, and chambers of commerce of the intermountain territory. It was organized at the Chicago hearing in 1914, when, after fighting before the Interstate Commerce Commission and the courts for some four or five years following the amendment of the fourth section, the commission, in response to an application of the carriers following the opening of the Panama Canal, clearly gave evidence that they were going to reject the decision which we had finally won before the United States Supreme Court after so much effort, delay, and expense, and in this connection we were not mistaken because later the commission did modify the order and put in very much greater differentials against the intermountain country than had previously been ordered on June 22, 1911. In fact, taking structural iron as illustrative, said differentials were increased from an average of 15 per cent to 54 per cent. At that point all of the parties of record

within the intermountain territory formed the Intermediate Rate Association, but agreed to give further time within which the Interstate Commerce Commission might have full and fair opportunity to work the matter out. Because the commission has so construed and applied the law under the fourth section as amended throughout all Southern and Western States in such manner as to give us no security whatever or anything approaching a stable basis in rates, we have appealed to Congress—the only branch of Government to which the States and the producers and consumers may appeal—and we are asking that an absolute long-and-short-haul provision be enacted at this time.

That is the history of the Intermediate Rate Association.

Mr. SCANDRETT. Well, the decision of the Supreme Court, to which you referred, was the decision of the Supreme Court affirming the order of the Interstate Commerce Commission, was it not?

Mr. SHAUGHNESSY. Yes, sir.

Mr. MANN. In the so-called intermountain States.

Mr. SHAUGHNESSY. Yes, sir, absolutely.

Mr. WETTRICK. In other words, when you found the commission or the courts would not do what you thought they ought to do, you decided to make a political question of it? Is not that a fact?

Mr. SHAUGHNESSY. If you want to put it that way, you can. You can have it in any language you want to put it in.

Mr. CAMPBELL. Right at this point, in view of the questions of Mr. Scandrett, I would like to ask Mr. Scandrett a few more questions in regard to his appearance here. Mr. Scandrett stated the other day, as I recollect, that he was appearing for the reversionary interests.

Mr. SCANDRETT. I have no objection to answering any questions from Mr. Campbell, although it appears to me to be ill grace after he refused to answer my questions when he was on the witness stand. I have not appeared as a witness.

Mr. CAMPBELL. I did not refuse; I simply wanted to know who Mr. Scandrett represented. I would like to know whether or not he is appearing here for the Director General or for the reversionary interests of the Union Pacific.

Mr. SCANDRETT. I told you very distinctly the other day that I am not appearing for the Director General. I do not undertake to represent him in any way. I am appearing for the Union Pacific system.

Mr. CAMPBELL. I would like to ask you then, whether or not the Union Pacific out of their own funds is paying you, or whether you are drawing your salary from the Government out of the income which they derive from freight.

Mr. SCANDRETT. I don't know.

Mr. CAMPBELL. Now, Mr. Senator, I do not ask that question with the idea of being impertinent or prying into Mr. Scandrett's private affairs, but I think it is vitally important, because if Mr. Scandrett and these other gentlemen here of the railroads are appearing on behalf of the reversionary interests of the railroads, I have no objection, providing they draw their pay from the reversionary in-

terests of those railroads, but if they are appearing here for those interests, and are drawing their pay, partly from me, I do most seriously object, and on behalf of the shippers whom I represent, I most seriously object to these railroad attorneys and representatives, some of them being advisers of the Director General, appearing here and drawing their pay from the United States Government, which has got to be made up by collecting freight from my clients. In other words, I most seriously object to their appearing here and fighting us, and I helping to pay for their services. Now, I would like to have that made perfectly clear, and I think it is legitimate, and I think we are entitled to have it made perfectly clear, and I would like to have Mr. Scandrett answer, as soon as available, whether or not he is drawing his pay in these hearings from the railroad company, the money being paid them out of the funds collected by the United States Government in the collection of freight charges.

Mr. MANN. Is Mr. Campbell desiring to prevent the development of facts before this committee?

Mr. CAMPBELL. Absolutely not, Mr. Mann. I will welcome the railroads here in this matter, if they will appear in their proper light, but I do object to their coming here and fighting this bill, and I helping to pay for their services in doing it.

Mr. SCANDRETT. I should think that that would be a question between the Government and the railroads, not between Mr. Campbell and me.

Mr. CAMPBELL. I think that Congress is entitled to know in what capacity you are appearing. You certainly have a right to appear here for the reversionary interests of the Union Pacific Railroad, but you have no right to appear here for the reversionary interests of the Union Pacific Railroad and draw your pay from me and the other citizens of this country.

Mr. MANN. I submit Mr. Scandrett has stated for whom he appears.

The CHAIRMAN. Let that matter end right there. It has been gone into sufficiently. Mr. Campbell has made his objection and we will go on with the hearing of the facts. It is a proper legitimate objection. I think I understand the situation. Mr. Scandrett stated that he is here for the railroad company, and the relation of the railroad company and the Director General are matters that are a part of the general situation which is to be dealt with by Congress and by the Government. Now, you may go ahead, Mr. Shaughnessy.

Mr. SHAUGHNESSY. In connection with the controversy, or rather in connection with the question raised by Mr. Scandrett, I want to submit at this time a copy of an exhibit, showing the action taken by the Interstate Commerce Commission on westbound transcontinental rates, from eastern defined territory to intermountain territory, during the past 10 years, and which clearly illustrates and portrays the variation that has been made in our rates and the differentials against us, and the grossly unlawful discrimination by which our development and prosperity has been absolutely throttled.

(The exhibit referred to is here printed in full as follows:)

Shaughnessy exhibit showing action taken by Interstate Commerce Commission on westbound transcontinental rates from eastern defined territory to inter-mountain territory during past 10 years.

COMPARATIVE MILEAGE TABLE.

From—	To Reno.	To San Francisco.
New York City.....	2,947	3,191
Pittsburgh.....	2,503	2,747
Cincinnati.....	2,333	2,577
Chicago.....	2,035	2,279
St. Louis.....	1,945	2,199
Kansas City, Omaha, and St. Paul.....	1,642	1,800
Denver.....	1,182	1,376

Interstate Commerce Commission's order of June 6, 1910.

FIRST-CLASS RATES TO POINTS WEST OF WINNEMUCCA TO AND INCLUDING RENO, NEV.

From—	Original rates prevailing to Reno.	Reduced rates ordered June 6, 1910.
	<i>Hundred-weight.</i>	<i>Hundred-weight.</i>
New York.....	\$4.20	\$3.50
Buffalo-Pittsburgh.....	4.20	3.20
Cincinnati-Detroit.....	4.20	3.05
Chicago.....	4.20	2.90
St. Louis.....	4.20	2.80
Kansas City, Omaha, and St. Paul.....	4.20	2.50
Denver.....	4.20	2.10

FIRST-CLASS RATES TO POINTS IN NEVADA, WINNEMUCCA, AND EAST.

From—	Original rates to Winnemucca.	Reduced rates ordered June 6, 1910.
	<i>Hundred-weight.</i>	<i>Hundred-weight.</i>
New York.....	\$4.60	\$3.33
Buffalo-Pittsburgh.....	4.60	3.04
Cincinnati-Detroit.....	4.60	2.90
Chicago.....	4.60	2.75
St. Louis.....	4.60	2.66
Kansas City, Omaha, and St. Paul.....	4.60	2.38
Denver.....	4.60	2.00

Compared with the foregoing the first-class rate from all of the above eastern points to San Francisco and other Pacific coast terminals was \$3 per hundredweight.

Structural iron and steel rates.

From Pittsburgh to Reno and San Francisco.

[Minimum carload, 60,000 pounds.]

	Present rate, Pittsburgh to Reno (in dollars per ton).	Rate as reduced, Pittsburgh to Reno (in dollars per ton).	Terminal rate, Pittsburgh to San Francisco (in dollars per ton).
Rates at time of original complaint in 1908.....	\$15.00 \$11.80 1 \$26.80 78.7		\$15.00
Differential against Reno, Phoenix, Boise City & Spokane... per cent.			
Interstate Commerce Commission order of June 22, 1911, on amended fourth section of 1910, in lieu of order in the Reno case No. 1665 and Phoenix case No. 1796, which had been fully made and presented on reasonableness of Pacific coast terminal rates if applied at the shorter haul intermountain points. This order never became effective, although sustained by the Supreme Court of United States (Intermountain Rate cases, 234 U. S., 476, 1914).....	\$24.60	\$18.40	\$16.00
Differential against Reno, Phoenix, etc., if this order became effective..... per cent.	15		
Interstate Commerce Commission order permitting carriers to file compromise rates in Reno and Phoenix cases 1665 and 1796 during litigation of amended fourth section, July 11, 1912, in lieu of decision on merits in these cases, which we urgently contended for before the commission on May 8, 1912.....	\$24.60 46	\$23.40	\$16.00
Differential against Reno, Phoenix, etc..... per cent.			
Interstate Commerce Commission order of Jan. 29, 1915, following opening of Panama Canal, when order of June 22, 1911, which had received the approval of the United States Supreme Court, was set aside.....	\$23.40 35.3	\$20.00	\$14.78
Differential against Reno..... per cent.			
Interstate Commerce Commission order of Mar. 1, 1916, to meet water competition, and giving notice that a rate of \$11 per ton might ultimately be necessary from Pittsburgh to Pacific Coast terminals.....	\$20.00 54	\$20.00	\$13.00
Differential against Reno..... per cent.			
Interstate Commerce Commission order of June 5, 1916, previous orders rescinded and carriers directed to construct rates on plan authorized in commission's order of June 22, 1911, which had received the approval of the United States Supreme Court.....	\$20.00 15.4	\$15.00	\$13.00
Differential against Reno, Phoenix, etc..... per cent.			
The carriers' assumed compliance with foregoing order resulted in the following increased rates being filed.....	\$20.00 15	\$21.60	\$18.80
Differential against Reno..... per cent.			
Thereafter the Interstate Commerce Commission suspended these increased rates whereupon the carriers withdrew and filed others, with the result that said order of June 5 never was fairly complied with; this tariff as finally published provided for an increase of \$2 per ton in terminal rates.....	\$20.00 33½	\$20.00	\$15.00
Differential against Reno, Phoenix, etc..... per cent.			

1 Plus back haul.

During the fall of 1916 the entire case was reopened and reheard upon showing that there was not at that time any water competition between the Atlantic and Pacific coasts, and on June 30, 1917, the commission made its order requiring literal compliance with the absolute rule of the fourth section, following which Congress inadvertently prevented the operation of the order by amending section 15 of the act to regulate commerce on August 9, 1917, requiring carriers to secure approval of Interstate Commerce Commission before any increased rates could be filed.

Wherefore, following hearings under said amended fifteenth section on the rate increase proposed by the carriers to the Pacific coast terminals and intermountain points, the commission has, on January 21, 1918, issued its order to become effective March 15, 1918, by which the absolute rule of the fourth section will, during the present conditions, be effective.

Using the same example, namely, structural iron and steel from Pittsburgh to Reno and San Francisco, a general idea of the present uniform rate adjustment may be noted, compared with the rates as formerly maintained:

	Original rate, Pittsburgh to Reno (in dollars per ton).	Rate as reduced, Pittsburgh to Reno (in dollars per ton).	Terminal rate, Pittsburgh to San Francisco (in dollars per ton).
Last order Interstate Commerce Commission above noted.....	\$20.00	\$20.00	\$20.00

Mr. SHAUGHNESSY. This exhibit shows first the mileage comparatively from eastern defined territory to Reno and to San Francisco; also the class rates from eastern defined territory to Reno and to San Francisco, and the rate as ordered June 6, 1910, by the Interstate Commerce Commission, reducing the class rates. That is the first page of the exhibit.

The second page of the exhibit carries the item of structural iron and steel, the rates covering the movement of that article, and while the rates will vary on other commodities upward and downward, we believe that structural iron and steel would be about as near representative as any commodity that could be taken.

Senator POMERENE. Is that the second table you refer to?

Mr. SHAUGHNESSY. That is on the second page. Structural steel and iron rates will fairly illustrate the operation of the differentials against Reno, and when I say Reno, I also refer or intend to refer also to the fact that it covers Phoenix, Boise, and Spokane, as well as Reno.

Senator POMERENE. The rates being the same?

Mr. SHAUGHNESSY. Yes; the rates being practically the same in all of that territory, from the Canadian line to the Mexican line throughout that belt.

The first column is the original rate from Pittsburgh to Reno, in dollars per ton. That is when our proceeding was started, along in 1908. The rates at that time from Pittsburgh, taking Pittsburgh as fairly representative of eastern points, intermediate to the Atlantic coast—the rate to Reno was \$26.80, made up of the Pacific coast terminal, which you will note appears in the third column there of \$15, that being the rate from Pittsburgh to San Francisco, so that the rate, you will notice, to Reno was made up of that \$15 terminal rate to San Francisco, plus the local rate back, at that time \$11.80.

Senator POMERENE. Let me ask you what was the rate from Pittsburgh direct to Reno?

Mr. SHAUGHNESSY. I am just getting to it.

Senator POMERENE. Excuse me.

Mr. SHAUGHNESSY. The total rate there, you see, is \$26.80 to Reno. Senator POMERENE. You mean by going through to San Francisco and back?

Mr. SHAUGHNESSY. Yes; that is the charge. I want to say in that connection, Senator—in the early days the carriers did really perform that service through to San Francisco and back, but during later years they have not performed the service. They have stopped the freight at Reno, although making the charge through to San Francisco and back to Reno, so that we have in the first example there, prior to the beginning of the proceeding, a rate from Pittsburgh to Reno of \$26.80, compared with the rate of \$15 if the shipment went on through to San Francisco, the farther distant point.

This, it will be observed, was a differential against Reno, Phoenix, Boise City and Spokane of 78.7 per cent. In other words, this measures the extent of the enormous discrimination which was assessed against us.

In the first paragraph it is stated that the I. C. C. order of June 22, 1911, on amended fourth section of 1910, in lieu of orders in the Reno case No. 1655 and Phoenix case No. 1796, which had been fully made and presented on reasonableness of the Pacific coast terminal rates, if applied at the shorter haul intermountain points, was \$24.60, which was the rate at that time from Pittsburgh to Reno, as compared with \$16, which was then the rate from Pittsburgh to San Francisco, and the rate as ordered reduced from Pittsburgh to Reno was made \$18.40.

Senator POMERENE. Leaving a differential against Reno of \$2.40?

Mr. SHAUGHNESSY. Yes.

Senator POMERENE. Is that what you mean?

Mr. SHAUGHNESSY. Yes; leaving a differential really expressed in percentages of 15 per cent.

Senator POMERENE. I mean \$2.40 a ton difference between \$18.40 and \$16, a differential against Reno?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. That \$18.40, you say was ordered. When was that ordered?

Mr. SHAUGHNESSY. June 22, 1911.

The CHAIRMAN. Did it go into effect?

Mr. SHAUGHNESSY. No; that order never became effective, although sustained after three years' contest, before the commission and the courts, by the United State Supreme Court in the Intermountain rate cases, 234 U. S. 476—known as the Intermountain rate cases—decided in 1914.

Senator POMERENE. I am not familiar with that case. Was it their position that the rates as fixed by the Interstate Commerce Commission should hold; that if there was any question as to the reasonableness or unreasonableness, that that was a rate fixed by the Interstate Commerce Commission, and it was a question of fact which they would not interfere with? Is that the idea?

Mr. SHAUGHNESSY. Yes; that is the idea.

Senator POMERENE. You know that the Supreme Court in no sense of the word expressed their approval of the rates?

Mr. SHAUGHNESSY. No.

Senator POMERENE. I would assume from the general principles of the law that would be the position.

Mr. SHAUGHNESSY. You are entirely correct.

The CHAIRMAN. That was practically the way the question was decided in all of these rate cases by the Supreme Court.

Mr. SHAUGHNESSY. Yes; on questions of fact, the Supreme Court has left it to the Interstate Commerce Commission.

Again referring to my exhibit—the next order states I. C. C. order permitting carriers to file compromise rates in Reno and Phoenix cases 1655 and 1796 during litigation of amended fourth section July 11, 1912, in lieu of decision on merits in these cases, which we urgently contended for before the commission on May 8, 1912. I need to explain there that in the beginning, Reno especially and I think Phoenix as well, and perhaps Spokane—but I know that the Reno case was made up on the reasonableness of the rates, challenging the reasonableness of the rates as applied at all Nevada points, and contending strenuously before the Interstate Commerce Commission that if these so-called low Pacific coast terminal rates were applied to Nevada points they would be fully compensatory, and we supported that allegation in our complaint by operating testimony of all kinds to prove that that was the fact. However, before getting a decision on that, the fourth section was amended in 1910, and thereafter, immediately following the Interstate Commerce Commission, instead of giving us a decision upon the reasonableness of the rates, as made in our case, consolidated all of the Intermountain cases under one head and decided that under the fourth section, as amended—

Senator POMERENE. Now, what was the amendment, briefly?

Mr. SHAUGHNESSY. The amendment of the section was this: At the time our complaint was originally filed, the fourth section provided that no greater charge should be made for a shorter than for a longer haul, moving over the same line and in the same direction, under substantially similar circumstances and conditions, and under that language of the act, the United States Supreme Court did finally decide that the carriers might exercise discretion as to when conditions were dissimilar, and, therefore, they filed rates whenever they found something that they called a dissimilar condition. Upon appeal to the Congress in 1910, that was amended by striking out the words "under substantially similar circumstances and conditions," and vesting the discretion with the Interstate Commerce Commission to make these exceptions, if any were made. It might either apply the absolute rule, or they might in special cases make such exceptions as they in their discretion thought justified.

The CHAIRMAN. And put the burden upon the carriers to make out a case?

Mr. SHAUGHNESSY. Yes, it placed the burden upon the carriers.

The CHAIRMAN. And require them to get an affirmative order of the Interstate Commerce Commission before they could charge a lower rate for the longer haul.

Mr. SHAUGHNESSY. Yes. Now, this order of May 8, 1912, was during the pendency of the litigation before the Supreme Court on the question of the validity of the amended fourth section of 1910, and also as to the reasonableness of the orders that were made at that time. During the pendency of that, while that was being decided under the fourth section, the Intermountain parties, the Reno, Spokane, Phoenix, and Salt Lake parties appeared before the Interstate

Commerce Commission and urged in addition to their decision which had been made on the fourth section, that we be granted a decision on the first section. In other words, that our rates should be just and reasonable, as provided by the first section, and we contended that we had made a full case before the Interstate Commerce Commission under that section on the reasonableness of the rates, without regard to the fourth section, which provided that no greater charge should be made for a shorter than for a longer haul. We asked during the time that these cases were being appealed to the Supreme Court, that they might make this order at that time. We contended, because the fourth-section order was being contested in the courts and might be delayed for a long time (and, incidentally, the final decision of the Supreme Court did not come down for more than two years thereafter), that we were fairly entitled to an order from the commission on the merits of our case under section 1. Well, in lieu of the decision on the merits at that time, the carriers made a proposal—a compromise proposal—that they would put in certain reduced carload-commodity rates, and while the intermountain parties in interest refused to consider favorably the carriers' proposals, the Interstate Commerce Commission authorized the carriers to put in the proposed compromise rates during the pendency of the litigation in the courts, and in that connection the rates were put in on terms prescribed by the carriers. This had the effect of increasing the rates ordered by the commission June 23, 1911—taking structural steel for example—from \$18.40 per ton to \$23.40, whereas the carriers were permitted to carry a rate of \$16 per ton to the longer-distance Pacific coast points. In other words, the adjustment had the effect of increasing the differential or discrimination against us from 15 per cent, as originally ordered, to 46 per cent, and this notwithstanding that we had clearly established the reasonableness of the rates as originally ordered by an abundance of cost data and other operating detail that has never been controverted.

Senator POMERENE. Then, if I construe these figures correctly as you have given them here, the Interstate Commerce Commission changed that rate, which was \$18.40 under the order of June 22, 1911?

Mr. SHAUGHNESSY. Yes; to \$23.40. But to be accurate, Senator, I should state that while the rate of \$18.40 was ordered, it had never been put into effect, because it was tied up in the courts.

Senator POMERENE. I see.

Mr. SHAUGHNESSY. Taken in this light we figure from \$24.80, which was in effect at the beginning of the trial of the \$18.40 order in court—

The CHAIRMAN. \$26.80 you have got?

Mr. SHAUGHNESSY. No; \$24.80, shown in the second paragraph of the exhibit.

The CHAIRMAN. It is \$24.60 on my copy.

Mr. SHAUGHNESSY. \$24.60; yes, you are right, Mr. Chairman. My copy is a little bit blurred. \$24.60; so it is reduced from \$24.60 a ton to \$23.40, as put in by the carriers under this compromise order. Is that clear?

Senator POMERENE. Yes.

Mr. SHAUGHNESSY. Figuring from this angle it may be said that by the action of the carriers the rate to Reno, Phoenix, Boise City,

Spokane, and all of that territory was reduced from \$26.80 to \$23.40 per ton, and that the Pacific coast terminal rates were increased from \$15 to \$16 per ton, thus reducing the discrimination against us from 78 per cent in 1908 to 48 per cent in 1912; but my first analysis showing that the carriers were authorized to increase the rates from \$18.40, as ordered, to their compromise basis of \$23.40 is significant in view of the fact that we had formerly satisfied the commission that \$18.40 was not less than reasonable or they would not have ordered it.

Following the order of the United States Supreme Court rendered on June 22, 1914, sustaining the action of the Interstate Commerce Commission and the legality of its order of June 22, 1911, the Pacific coast interests and the railroads asked for a suspension of the order, and after consideration this request was granted by the commission. Thereafter the Panama Canal was opened and application was made by the rail carriers for greater relief than was granted under the original order of June 22, 1911, and following hearing and determination the commission on January 29, 1915, issued its order granting such relief and set its order of June 22, 1911, aside. Thereafter, in response to the carriers' application, further and greater relief was on March 1, 1916, granted on iron articles from Pittsburgh to San Francisco. While the action in these cases reduced our rates on structural steel from \$23.40 to \$20 per ton, it at the same time reduced the rates to the Pacific coast terminals from \$16 to \$13 per ton, and therefore the discrimination was increased against us from 15 per cent to 54 per cent.

While there was a reduction in the rate, there was an increase in the differential against us. Under date of June 5, 1916, the Interstate Commerce Commission's previous orders were rescinded, and carriers directed to construct rates on plan authorized in commission's order of June 22, 1911, which had received the approval of the United States Supreme Court. That, if it had been put on the basis of the rates then in effect, would have given to Reno and all of the intermountain country a rate of \$15 per ton, as compared with \$20 per ton under the other order, and would have allowed the rate at the Pacific coast terminal to remain as it had been reduced to \$13 per ton.

The CHAIRMAN. I notice here a large number of orders of the Interstate Commerce Commission that you have listed on this showing.

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. The first page and the second page, changing the rates.

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. And it is rather confusing, because it seems that those rates never went into effect.

Mr. SHAUGHNESSY. That is true.

The CHAIRMAN. Now, what was the use of these orders of the Interstate Commerce Commission, if they did not put rates into effect? What is the situation there that causes a showing here of this series of orders of the Interstate Commerce Commission which never had any practical effect? What is the cause of that?

Mr. SHAUGHNESSY. Well, I don't know why, but the Interstate Commerce Commission certainly temporized with the question, and

they listened to our friends upon the Pacific coast, upon one pretense or another, as to a suspension of these orders and as to rehearings, and upon the basis of changed conditions they modified and changed their orders from time to time.

The CHAIRMAN. Were the orders referred to made after hearing and examination?

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. Were the reasons for the orders stated in writing by the Interstate Commerce Commission in an opinion or decision?

Mr. SHAUGHNESSY. Yes; we have all of those decisions.

The CHAIRMAN. And still they were not put into effect.

Mr. SHAUGHNESSY. They were not put into effect. They were suspended from time to time, and a study of this exhibit will show you that they have not put in these rates, while, of course, they did make reductions from time to time, but yet they would make a greater reduction at the coast, and they kept us under a very much heavier differential than we were given or granted by the orders from time to time.

The CHAIRMAN. I do not understand this statement. You say that order of June 5, 1916, and previous orders were rescinded and the carriers directed to construct rates on plan authorized in commission's order of June 22, 1911, which, according to your statement, gave you a rate to Reno of \$15.

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. You go on down in your column and say that the carriers assumed compliance with the foregoing order and put in a rate of \$21.60.

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. How can you get a rate of \$21.60 by complying with an order for a \$15 rate?

Mr. SHAUGHNESSY. That is a very pertinent inquiry, Mr. Chairman. I am glad you raised that point, because I had forgotten it. The reason why the carriers can establish a rate of \$21.60 when a rate of \$15 might reasonably be expected is due entirely to the manner in which the Interstate Commerce Commission have framed their orders. In other words, when discrimination has been found the Interstate Commerce Commission has conceived it to be its duty to make an alternative instead of a specific and binding order. This action is defended upon the theory that the commission has not the statutory power to make a minimum rate and that it is limited to the fixing of maximum rates only. In its thirtieth annual report the commission makes the following explanation of the method it employs in the removal of discrimination:

If we find rates in our opinion are unjust, unreasonable, and unduly prejudicial, as alleged, it becomes our duty to order the cessation of these violations of the act, to determine and prescribe just and reasonable interstate rates to be thereafter observed as maxima, to require the carriers defendants to remove undue prejudice found existing, but we can not prescribe the exact rate or minimum rate to be maintained, nor do we specify the particular method to be employed in removing the undue prejudice. The carriers remain at liberty to issue in compliance with the act such rates as they see fit, provided they do not exceed those set as maxima and do not continue the undue prejudice. In eliminating the latter they may lawfully reduce interstate rates to the basis of the State rates, increase the latter to the level of the former, or otherwise equalize the two in such a way as to do away with the undue prejudice.

Since this report was made the fifteenth section of the act to regulate commerce was amended and provides that before carriers can file increased rates the permission of the commission must be secured. In respect to fourth-section applications, the commission either grants or denies the application, and if denied, as in the case we are now considering, the carriers are free to remove the discrimination by proposing that the short-haul rates be reduced to the level of the lower long-haul rates or that the long-haul rates be increased to the level of the higher short-haul rates, or that the rates be reduced in part and increased in part, bringing both long-and-short-haul rates to a common level. This is confusion worse confounded, and one looks in vain to find anything approaching it in any of the various State railroad-commission laws. All of the provisions carried under sections 1, 2, 3, 4, and 15 should be consolidated and the act to regulate commerce made to mean something that ordinary producers and consumers can understand and under which they can secure comprehensive and definite relief without having to go through all of the courts in the land merely to find in the end that after great delay, labor, and expense they are confined to a particular section of the act to regulate commerce, which is not broad enough to give them the relief that they were from the start entitled to. What I have said here is general and should not be applied to our intermountain rate cases, for in those cases we have from the first had our pleadings and our testimony directed squarely to the reasonableness of the rates as well as their discriminatory feature, and it therefore can not be pleaded that the Interstate Commerce Commission was ever without jurisdiction to make a full and comprehensive order in these cases. The vice of permitting the Interstate Commerce Commission to go on making the alternative orders above referred to, which they have been making during the past several years, are so far reaching in their effect that the time is at hand when Congress must step in and correct abuses which are becoming unbearable and will not be longer countenanced. For example, the carriers, in compliance with these optional orders, are setting at naught State-made rates and regulations with a high hand, and in this connection I may say that the sovereignty of the States, the State commissions, the State legislatures, and the State courts, have been subordinated by the railroads, and their very future existence is threatened. Recently in the Shreveport case, decided January 22, 1918 (48 I. C. C., 312), the commission has assumed jurisdiction over every local freight rate within the State of Texas to the exclusion of the State legislature, the State courts, and the State railroad commission. It is the most pro-railroad decision that I have ever read, and in this connection let it be said that all of the encroachments upon the right of the various States to control their own internal commerce and its instrumentalities, which were imposed in the famous Minnesota rate case, by the district Federal court, and which after a spirited defense of these fundamental principles by the various States were restored by the United States Supreme Court, have been reinstated by the commission in this case under the plea that the State-made rates operated as a "burden on interstate commerce."

Now, it might just as well be said now as at any other time that we are not going to relinquish the dignity and the power of the

various States to control their own internal commerce, and we certainly will not accept it in the form in which it has been presented in the Shreveport case, which, when analyzed, is the same brand of medicine that the railroads tried to administer in the Minnesota rate case. Now, to get back to your question, Mr. Chairman, these alternative orders have proven very unsatisfactory because of the uncertainty and the instability that it causes in the rates. In the case referred to, instead of Reno being given the rate of \$15, as would have been the effect if the order had been specific and was predicated upon the rates then in effect, the railroads were able, under the alternative order of the commission, while maintaining the parity of rates ordered on June 22, 1911, to make the rate \$21.60 at Reno and other intermediate points and to increase the rate at the Pacific coast terminals from \$13 to \$18.80, and thus it will be observed that, while this order was supposed to reestablish the commission's original fourth-section order of June 22, 1911, we got a rate of \$21.60, as fixed by the carriers, instead of a rate of \$18.40, which was originally ordered by the commission in 1911. Now, if this can be called reasonable and satisfying public regulation of this transportation situation, then I must confess that I do not understand the meaning of the terms.

Thereafter the Interstate Commerce Commission suspended these increased rates whereupon the carriers withdrew and filed others with the result that said order of June 5 never was fully complied with. While an increase of \$2 per ton in the terminal rates was authorized, the rates as finally published by the carriers reduced the Pacific coast terminal rate from \$18.80 to \$15, and our rate from \$21.60 to \$20, and thus the discrimination was again increased against us, from 15 per cent to 33½ per cent.

Mr. SCANDRETT. The rate of \$18.80 was never in effect, was it? Senator POMERENE. What rate?

Mr. SCANDRETT. The rate of \$18.80 to terminals.

Mr. SHAUGHNESSY. No; but it shows the range. In other words that, while various orders were made from time to time, the discrimination was always so maintained against us that we never did get the benefit of the rate adjustment (\$18.40 or the differential of 15 per cent) ordered by the Interstate Commerce Commission June 22, 1911 and sustained by the United States Supreme Court June 22, 1914.

Senator POMERENE. It was an increase in the terminal rate from \$13 to \$15, and a decrease in your rate from \$21.60 to \$20.

Mr. SHAUGHNESSY. Yes, sir; that is correct, but the increase ranged from 15.4 per cent—the differential—to 33½ per cent.

Senator POMERENE. If it will not interrupt or divert you, in order that I may get a more complete view of this situation, you are speaking of rates now from Pittsburgh and other eastern territory to Reno and San Francisco?

Mr. SHAUGHNESSY. Yes.

Senator POMERENE. Now, there are, as I understand it, large iron furnaces, etc., at Denver.

Mr. SHAUGHNESSY. Yes, sir; and Pueblo.

Senator POMERENE. These same differentials or substantially the same differentials prevail against Reno for shipments from Denver to the coast and Pueblo.

Mr. SHAUGHNESSY. Yes, sir; they are a lower scale of rates and the differentials have been much greater.

Senator POMERENE. How are those proportioned?

The CHAIRMAN. As applied to the Colorado Fuel & Iron Co.?

Mr. SHAUGHNESSY. The rates have ranged like this, that, whereas the rate from Pueblo to San Francisco was 40 cents on structural steel or \$8 per ton, the rate covering the movement of the same commodity to the shorter distance point at Reno was \$15 per ton or a differential of 87½ per cent. In other words, take two cars of steel from Pueblo carrying 30 tons each, one destined to San Francisco and the other to Reno—traveling over the same line, in the same direction, and in fact, in the same train—the San Francisco car would pay in freight charges only \$240, whereas the one dropped off at Reno would pay \$450. This is illustrative of the extent to which the railroads have been able to discriminate against us, and in a word, explain why we are here asking for relief.

The CHAIRMAN. Some statement was made here yesterday, I think by Mr. McCarthy, the general effect of which was that there were concerns, large producers, large copper mines, for instance, at low rates. Does that apply to the Colorado Fuel & Iron Co.?

Mr. SHAUGHNESSY. That is on copper?

The CHAIRMAN. No; on the product of the company whatever it may be.

Mr. SHAUGHNESSY. Well, there are, of course, certain commodities that do get a low rate, and that is based upon the volume of the business that they handle, and that, of course, carries with it. I suppose in the fixing of those rates, the volume of the business in and the volume of the business out.

Senator POMERENE. As I understand you, the reason given for these coast rates was in order to enable the railroad to compete with the water transportation?

Mr. SHAUGHNESSY. Yes.

Senator POMERENE. Now, of course, it is apparent that that same reason would not apply so far as Colorado rates are concerned.

Mr. SHAUGHNESSY. No; it should not.

Senator POMERENE. What reason is given for the differential in that case?

Mr. SHAUGHNESSY. Well, I have never been able to get all of the angles on that proposition. The railroads explain that it is a question of market competition from those interior points—Pueblo and other points—with the water competitive points. It has been argued that the rates from the Atlantic coast or from the Atlantic coast and Pittsburgh territory to San Francisco via the ocean route have fixed the rates for all inland manufacturing centers such as Pueblo, Kansas City, and Chicago, for example. Therefore, having fixed the rates to meet the water competition on a comparatively small volume of the total business, the inland manufacturing centers—one-half to two-thirds the distance across the continent must likewise be lowered to at least the same basis, as a matter of market competition. But I have never been able to understand why there has been any necessity for the differentials against the intermountain points from these manufacturing centers that are not subject to water competition, from which the great bulk of our tonnage comes. The Inter-

state Commerce Commission has found that practically 75 per cent of the westbound tonnage destined to the intermountain territory comes from Chicago and points west thereof.

Mr. LYON. Senator, could I ask the witness a question to get that straight?

The CHAIRMAN. Yes.

Mr. LYON. Is it not a fact that the carriers have always contended that if there was water competition from New York to San Francisco on the coast, that it was the right of the carriers serving Chicago and Pueblo and intermediate points between New York and San Francisco, to reduce their rates to at least as low a figure as the rates in effect from the seaboard territory at New York?

Mr. SHAUGHNESSY. Yes.

Mr. LYON. And that accounts for the reduction of the rate at Pueblo, what they call market competition. The carriers claim the right and the commission has always supported it, and the courts, that not only have railroads a right to meet actual water competition where there is water competition, such as the Luckenbach Steamship Co., operating from the port of New York to the port of San Francisco, but if there is an industry at Pueblo, manufacturing the same article as is manufactured in New Jersey, that then the railroads have the right to reduce the rate from Pueblo to San Francisco, and violate the fourth section in doing so, if it is necessary to meet the competition of the water lines from New York.

Senator POMERENE. In other words, it is to be treated purely as a transportation problem, without any reference to the effect it will have on other industries; is that the idea?

Mr. LYON. I do not exactly understand that, but it is purely a question of market competition. The rail carriers have the right to put into San Francisco that article, if manufactured in Pueblo, if the same article is manufactured in New York or manufactured in Belgium or Liverpool.

The CHAIRMAN. There is no water transportation involved in it.

Mr. LYON. The only water transportation is from New York.

The CHAIRMAN. No water competition from Pueblo to San Francisco, is there?

Mr. LYON. Not that I know of; no, sir.

The CHAIRMAN. But they give them a lower rate there, in order to put them on the same basis, do they, as the city which has water competition.

Mr. LYON. Yes; that called forth my statement yesterday, Senator, that boat lines had not only to compete with the railroads, from New York to San Francisco on an out-of-pocket basis, but they had to compete with the railroads from Pueblo to San Francisco, because there was a similar thing manufactured in Pueblo that was manufactured in New York.

Senator POMERENE. Yes; but my point is this: You are treating this thing wholly as a transportation problem.

Mr. LYON. Yes.

Senator POMERENE. Without any reference to the effect that it is going to have upon the industries of Pueblo and Reno.

Mr. LYON. Absolutely, yes; its effect upon the railroads and the shipper.

Senator POMERENE. I would like to have some ethical philosopher explain the soundness of that sort of a doctrine, if it can be done.

Mr. LYON. I am not a philosopher.

Senator POMERENE. The other witnesses failed. I would like to hear it.

Mr. CAMPBELL. Senator, may I explain to Senator Pomerene, who was not here at the time I introduced that map on iron and steel? I would like to give the reiteration of those actual rates.

Senator POMERENE. I desire to say that up to date I have found it physically impossible to be in the Senate and here in the committee room at the same time. That is the reason I was not here.

Mr. CAMPBELL. I certainly was not criticizing the Senator for not being here, but I want to clear up what seemed to be in his mind. Now, the rates from Pittsburgh to San Francisco on iron and steel, prior to December 31, 1916, were 65 cents a hundred. Now, from New York, where the boats could take the iron and steel, the rate from New York to San Francisco was 75 cents. Now, from Pueblo to San Francisco, the rate was 40 cents, and from Pueblo to Reno and Spokane, right on the line, right through those points, was 75 cents a hundred. In other words, they charged more from Pueblo to Reno—10 cents a hundred more—than they charged from Pittsburgh to San Francisco. Those are the actual rates.

Senator POMERENE. Then as I understand it, in order to defend the conclusion that we shall have low rates to the coast, we use one reason when that suits our purpose, and when that does not suit our purpose we shift to another reason.

Mr. CAMPBELL. Precisely.

Senator POMERENE. I think I catch it.

The CHAIRMAN. Shift from water competition to market competition.

Mr. SHAUGHNESSY. Concluding this exhibit, let me state that on January 21, 1918, the Interstate Commerce Commission issued its order to become effective March 18, 1918, by which the absolute rule of the fourth section will, during the present conditions, be effective. Using the same example, namely, structural iron and steel from Pittsburgh to Reno and San Francisco, a general idea of the present uniform rate adjustment may be noted, compared with the rates as formerly maintained.

It is only necessary to say there that the rate is now \$20 uniformly. In other words, the rate to the coast has been increased from \$15 a ton to \$20 a ton, whereas the rate to Reno remains at \$20, as it was formerly.

Mr. SHAUGHNESSY. Before closing this branch of my testimony I want to refer to the commission's adjustment of the rates from Chicago by its schedule C order of January 29, 1915, following the opening of the Panama Canal. As practically 75 per cent of the commodities shipped from all eastern defined territory into the intermountain territory comes from the Chicago territory and territories west thereof, the differentials or discriminations authorized against us from Chicago territory, using structural steel as illustrative, will more fairly exemplify the situation than has been shown by the Pittsburgh exhibit with which I have been dealing. The table below shows the surprising extent to which the discrimination against the intermountain territory was authorized by the

Interstate Commerce Commission from these nearer sources of supply:

Structural iron and steel.

[From Chicago to Reno.]

	Rate at time when order made (per ton).	Rate as reduced (per ton).	Terminal rate to San Francisco (per ton).
Rates prior to June 22, 1911.....	\$24.60		\$16.00
Differential against Reno..... per cent..	54		
I. C. C. order of June 22, 1911.....	\$24.60	\$17.20	\$16.00
Differential against Reno..... per cent..	7		
I. C. C. order of January 29, 1915.....	\$21.20	\$18.00	\$11.00
Differential against Reno..... per cent..	64		

This table shows the startling manner in which the commission reversed its order of June 22, 1911, wherein a differential of only 7 per cent against Reno was provided, and by its order of January 29, 1915, increased the differential or discrimination against Reno and other intermountain points to 64 per cent. Now, in this connection I want to emphasize that the reduced rates put in at the Pacific coast terminals were contingent upon very greatly increased car loadings, the net result of which were sufficient to more than offset any losses in car earnings due to the rate reductions; in fact, if the discrimination had been eliminated by making the "absolute rule" of the fourth section operative and these reduced rates and increased car loadings had been uniformly applied at intermediate and Pacific coast terminals the returns therefrom would have been highly compensatory.

Mr. CAMPBELL. Mr. Shaughnessy, before you leave that will you explain the change of minimum which took place, or the increase which took place by the lowering of the rates—the increased revenue per car which was obtained in this so-called reduction to the coast?

Mr. SHAUGHNESSY. Yes, sir. I know that the minimums were greatly increased and I have got a memorandum on that here some place.

Mr. CAMPBELL. As a matter of fact, when the rates were reduced to the coast, the minimum was raised, was it not?

Mr. SHAUGHNESSY. Yes, sir; from 25 to 100 per cent.

Mr. CAMPBELL. So that the earnings to the coast, after the reduction of the rates, with the increased minimums, were more than it had been under the higher rates?

Mr. SHAUGHNESSY. Yes; while the rates to the Pacific coast were reduced from 15 to 50 per cent the car loadings were increased from 25 to 100 per cent. from which it follows, of course, that the car earnings were much greater under the lower rates, put in to meet the canal competition, than they were formerly under the higher rates and lighter car loadings. The net result of the commission's order in this instance was a very substantial increase in car earnings and therefore there was no good reason why the "absolute rule" of the fourth section should not have been literally enforced. Nor is there any reason now or for the future.

Take, for example, iron pipe from Pittsburgh to San Francisco, where formerly contingent upon a minimum lading of 20 tons, and

the rate was \$13 per ton or \$260 per car, and when contingent upon a minimum lading of 40 tons the rate was reduced to \$11 per ton, and the car earnings thereby increased to \$440, was it reasonable or fair to permit a heavy differential against the shorter haul, intermediate points, and require them to pay \$17 per ton or \$680 per car, whereas formerly under the lighter lading of 20 tons they paid \$20 per ton, but the earnings were only \$400 per car. Other examples similar in kind but of varying degree might be cited. However, this illustrates the unwarranted injustice and shows that there is no reasonable necessity for the maintenance of such discrimination at intermediate points, and we earnestly contend that the power to authorize the carriers to build up favored communities or industrial centers at the expense of the great interior should never have been lodged in the hands of any administrative tribunal, and that it should now be taken away and forever prohibited by the enactment of the legislation here under consideration.

Mr. DONNELLY. Senator Poindexter, may I make a statement at this time, prompted by Senator Pomerene's question?

The CHAIRMAN. I would be very glad to have Senator Pomerene's question answered.

Mr. DONNELLY. With reference to this question which you were just asking, I thought perhaps Mr. Shaughnessy's statement and Mr. Lyon's statement have not left it entirely clear. If you assume that a rate is made by the ocean carrier from New York to San Francisco of \$1, that is a rate which, from the rail standpoint, could not be properly applied for the movement of that traffic as a just and reasonable rate. We will assume that it could not be applied as a just and reasonable rate from Chicago. The particular article moving from New York to San Francisco on that rate, let us say, is an iron or steel article. The carrier finds that the purchaser or consumer at San Francisco is just as willing to receive that article from Chicago as from New York, or from Pueblo as from New York. If the carrier has to move it at all in competition with the boat line at New York, it must make its rates with reference to the water competitive rates from New York. Now, while I have assumed that the water-competitive rate is \$1, we may assume at the same time that a just and reasonable rate from Chicago to San Francisco—a just and reasonable rate from Chicago to San Francisco or from Pueblo to San Francisco, is \$1.25. Such a rate has been submitted to the Interstate Commerce Commission and has had the stamp of approval put upon it. The rail carrier, finding that it can not carry this business in competition with the water carriers from New York if it persists in the exaction of its just and reasonable rate of \$1.25, sees fit to meet the competition from the intermediate points and gets permission to do so without lowering the rates at points intermediate between Pueblo and San Francisco or between Chicago and San Francisco, if the rate is met from those points.

Now, your question was whether the interests of Pueblo or Reno or any of the intermediate territory were regarded in that kind of an adjustment. I submit it is perfectly obvious, I think, that the interests of neither of those communities is in the slightest degree affected by that kind of a step. Nobody is injured by it. The carrier has an opportunity of adding in that way, to some extent, to its net revenue.

Senator POMERENE. In other words, your proposition is this, that if they give the ironmonger at Pittsburgh a rate through Reno, to San Francisco, which enables him to get into the San Francisco market, and get him there at less cost of transportation, taking into consideration the distances that the Reno merchant can get in, that the Reno merchant has not been affected. Is that your thought?

Mr. DONNELLY. Oh, no, Senator Pomerene, it is not that.

Senator POMERENE. Just let me go further. Don't you think that we, sitting here as a legislative committee, should hold the interests of Reno just as closely to our hearts as we do the transportation companies, whether they be rail or water?

Mr. DONNELLY. Beyond a shadow of a doubt you should, and if this adjustment involves the very slightest sacrifice to the interests of Reno or any intermediate community, it ought to be discountenanced.

Senator POMERENE. It looks to me, as I understand this contention here, that it seems that there is a fight on to divide the whole commercial world between the transcontinental lines and the water lines, without regard to the effect that it may have on the intermountain industries. Now, does it not appeal to you in that wise also?

Mr. DONNELLY. It does not, Senator Pomerene.

Senator POMERENE. I would be very glad to have you explain it.

Mr. DONNELLY. I perhaps had ought to apologize for interrupting at all, but it seemed to me there was a single thought in your mind that might be cleared if this statement was more completely covered.

Senator POMERENE. I am from Missouri on that or any other proposition, and I would like to know what the facts are about it. If it can be explained, I want to have it explained. Up to date it has not been explained to me at all.

The CHAIRMAN. We are very glad to have your statement, but I would like for you to give your name, just for the record, so the stenographer can get it, and for whom you appear.

Mr. DONNELLY. My name is Charles Donnelly, and I appear for the Northern Pacific Railway Co.

The CHAIRMAN. Your address?

Mr. DONNELLY. St. Paul, Minn.

The CHAIRMAN. Do you prefer to go on just now, Mr. Donnelly, or to allow Mr. Shaughnessy to finish his statement and then come in in regular order?

Mr. DONNELLY. I do not expect, Senator Poindexter, to make a statement at all. I was prompted to get your permission to make this interruption by the thought that I might remove this impression which was suggested by Senator Pomerene's specific question, but the whole question from the standpoint of the railroads will be presented very much more fully than I can present it by the traffic representatives of the Union Pacific and the Southern Pacific companies.

The CHAIRMAN. The same principle applies as to the different lines.

Mr. DONNELLY. The same principle applies.

The CHAIRMAN. So far as the Northern Pacific and the Southern Pacific are concerned they occupy the same positions?

Mr. DONNELLY. Entirely so.

The CHAIRMAN. Let me ask you in regard to Senator Pomerene's query. there is no water competition between Chicago and Pueblo and San Francisco, is there?

Mr. DONNELLY. None at all.

The CHAIRMAN. And yet you give those cities the benefit of a so-called water competitive rate.

Mr. DONNELLY. We do.

The CHAIRMAN. Now, there is no water competition between New York and Reno, is there?

Mr. DONNELLY. None at all.

The CHAIRMAN. Why don't you give Reno the benefit of the water competitive rate, the same as you do Pueblo and Chicago?

Mr. DONNELLY. Well, Senator Poindexter, there is not the same necessity for giving it to Reno.

The CHAIRMAN. I think the principles are the same.

Senator POMERENE. Only different in degree.

Mr. DONNELLY. No; I think the difference is radically distinct.

Senator POMERENE. Wherein?

Mr. DONNELLY. One is the question of the point of production, the other that of consumption. Reno is not, any more than San Francisco is, entitled to anything more than a just and reasonable rate, and if Reno gets that, she can not complain. It has no right to complain.

Senator POMERENE. Now, let us see whether it has not got a right to complain. I am not quite clear as to the industries at Reno, but it was suggested here yesterday, that in the case of the wool schedule, there was one rate from the coast for wool through to New York and Boston, another rate from Nevada or Colorado, I have forgotten which—or Utah—to the coast, and the Utah flockmaster sends his clip on to San Francisco and has it baled there, and pays for the baling, and then ships it from San Francisco back to New York, because he can do that and save money, rather than to ship it direct from Utah to New York.

Mr. DONNELLY. Well, he could save money if he had the facilities for baling at Utah.

Senator POMERENE. Oh, well, the baling proposition is 15 cents a hundred. If that was the only question there was in it, I suspect there would not be any difficulty about that.

The CHAIRMAN. You do not mean to say, Mr. Donnelly, that he could get a lower rate from Ogden to Boston, if he baled it in Ogden and shipped it to Boston.

Mr. DONNELLY. He could not get a lower rate than a water competitive rate.

The CHAIRMAN. Could he get as low a rate?

Mr. DONNELLY. No; he could not.

The CHAIRMAN. You said awhile ago that the reason you did not give Reno a competitive rate was because Reno was a point of consumption, not a point of shipment. Now, we have got an identical case of a point of shipment. What is your excuse there?

Mr. DONNELLY. I would say, Senator Poindexter, that I would not undertake to speak as a lawyer, to deal with the traffic intricacies of this question.

The CHAIRMAN. I thought that was what you were dealing with.

Mr. DONNELLY. No; I thought I could dislodge this thought that I saw was present in the mind of Senator Pomerene on this specific question.

Senator POMERENE. You may have given a reason that is satisfactory to you, but it does not appeal to me one bit. The same difficulty is there. If I am wrong about it, I want to be set right.

Mr. DONNELLY. Of course, I can only express my regret that I have not been able to dislodge—

Senator POMERENE. I am very glad to have heard you, but if you have made it clear to yourself, you have not made it clear to me.

Mr. DONNELLY. I think, Senator Pomerene, that this must be so, that a community situated as Reno is, dealing with the specific rates to which my remarks were addressed—a community situated as Reno is, and having a just and reasonable rate for the carriage of that article from Chicago or from Pueblo to Reno, is not in a position to claim, merely because of the fact that the rail carrier moves traffic through Reno and deposits it at a terminal 300 or 400 miles farther west, and at a less rate, that that less rate is the rate which the carrier must make in order to meet competition of any kind, whether you call it market competition or water competition.

Senator POMERENE. That is a very clear discrimination against Reno.

Mr. DONNELLY. I will state, Senator Pomerene, then, that your sentiment on that question is clearly opposed, not merely to the opinions of the Interstate Commerce Commission, but to those of the Supreme Court of the United States.

Senator POMERENE. That does not disturb me any. The Supreme Court of the United States, as was indicated here, has not passed on that question, and I think you, as a lawyer, know that they do not pass upon the question as to the reasonableness and unreasonableness of these rates. They pass upon legal questions.

Mr. DONNELLY. They passed and have passed in the One hundred and seventy-fifth United States upon the specific question of the right of the carrier to meet at the terminal point the competition of water carriers from an intermediate market point, and they have given their express sanction to the principle of market competition.

Mr. SHAUGHNESSY. That was under the original section, though, as qualified, when the carriers determined for themselves when the circumstances and conditions were dissimilar.

Mr. DONNELLY. It was under the fourth section, and of course, the commission is empowered to do what the Supreme Court recognized it was lawful to do.

The CHAIRMAN. Mr. Donnelly, in that case what the Supreme Court decided was what the carriers and Interstate Commerce Commission were allowed to do under the statute as existing at that time, was it not?

Mr. DONNELLY. Yes; under the statute.

The CHAIRMAN. Was not that what they decided?

Mr. DONNELLY. It was.

The CHAIRMAN. Did the Supreme Court undertake to say what was right and proper as to the rates?

Senator POMERENE. As a question of fact?

The CHAIRMAN. Yes.

Mr. DONNELLY. Of course, it countenanced the continuance of that kind of an adjustment, Senator Poindexter, as being perfectly consistent with the requirements of the act to regulate commerce.

The CHAIRMAN. Exactly; that is what I understood.

Mr. DONNELLY. Now, if it was consistent with those requirements, it was not unlawful.

Senator POMERENE. Do you mean to say that the Supreme Court passed upon the question of fact as to whether a certain schedule of rates were right or wrong?

Mr. DONNELLY. The reasonableness of those rates, Senator Pomerene, was not passed upon by the Supreme Court. You are entirely right about that.

Senator POMERENE. That is what I thought; so I think you and I do not differ at all as to what the position of the Supreme Court has been on the subject.

Mr. DONNELLY. But the question of discrimination was involved, and this was the only question that was brought up, and at any rate, I thank you both for the privilege.

The CHAIRMAN. We are very glad, as far as I am individually concerned, to have every viewpoint and every angle of this thing expressed and illuminated, if it can be illuminated. Now, you say you had to make a rate from Chicago to San Francisco on iron equal to the rate from New York to San Francisco on iron in order to get business at all, otherwise the consumers in San Francisco would have ordered their iron from New York.

Mr. DONNELLY. That is the suppositious case.

The CHAIRMAN. As a matter of fact, I do not know that structural iron moves by water at all.

Mr. DONNELLY. Of course, I am assuming a commodity that does.

The CHAIRMAN. You made these rates on structural iron. You picked them out yourself.

Mr. DONNELLY. I said an iron or steel article. I did not specify structural iron. I said some iron or steel article actually moving by water from New York.

The CHAIRMAN. What you said as to the rates applies to structural iron, does it not?

Mr. DONNELLY. At present, it does not apply to any commodity as to which there is not water competition.

The CHAIRMAN. Why do you make those rates on it?

Mr. DONNELLY. Any rate and any traffic representative will concede that any rate, professedly grounded upon water competition, where there is none, is a rate that ought not to be allowed to continue.

The CHAIRMAN. You concede that, do you?

Mr. DONNELLY. We do.

The CHAIRMAN. What percentage of these discriminations—I call them discriminations—apply to commodities such as you have just mentioned, in which there is no actual water competition?

Mr. DONNELLY. Well, as to what percentage may have applied in the past, there have been doubtless instances of irregularities in the tariff, rates being there which ought not to be there.

The CHAIRMAN. Did the carriers ever voluntarily correct any of those irregularities?

Mr. DONNELLY. They did.

The CHAIRMAN. Without complaint?

Mr. DONNELLY. They did voluntarily correct many of them, Senator Poindexter, and they are engaged constantly in making tariff revisions.

The CHAIRMAN. Did they ever have their attention called to the fact that this exception you have specified, in which no representative of the carrier would claim the rate was right on such iron, existed? Have they ever corrected that?

Mr. DONNELLY. I would not undertake to say as a tariff proposition, whether there is any such rate or whether there has been any such rate. If there is any such rate, and it is there, professedly grounded upon a water competition which does not exist, indisputably it ought not to be there, but we are approaching this question in line with the very thought you expressed the other day, that this is not a question of individual rates. Doubtless it accentuates from the standpoint of the proponents of this bill, what they conceive to be the injustice of the existing conditions, when they specify these individual instances, but you are dealing with the specific question of policy—shall this authority reside longer in the commission or shall it not?

The CHAIRMAN. I agree with you entirely on that.

Mr. DONNELLY. Now, the principle on that question as to whether it shall or shall not, presents simply the question of the propriety of the principle, and the propriety of the principle remains unshaken, even if you point out a hundred violations of it.

The CHAIRMAN. Well, that is the old system of philosophy that was reformed by Francis Bacon. Now, I think the conditions, the circumstances, and the facts, taken all together, determine the policy, and if the facts indicate that the policy previously pursued worked injustice and wrong and discrimination, don't you think that would be an argument in favor of a new policy?

Mr. DONNELLY. If the policy actually pursued. Senator Poin-dexter, under Government regulation, redounds to the disadvantage of these intermountain cities, or works injustice, it suggests a reason for the improvement of the administrative machinery. I don't concede for a moment that that is true, and that there are any considerable—not that there are some—but that there are any considerable number of instances of departure from this principle, but if there are, it would not tally in the slightest degree against this principle in itself, because taken in itself, and rightly applied, it is a principle which can not be refuted, and it must suggest itself to you, as a significant circumstance, that this principle has withstood the assaults of the intermountain communities and other people who are opposing it, not simply in the minds of the railroad men, but in the minds of the impartial administrative officers to whom the question has been submitted.

The CHAIRMAN. Well, I will not go into that with you. I want to ask you just one more question. Of course, the history of the legislation and the effort to reform this has been gone into pretty thoroughly. The act of 1887 and the fourth section was intended to change this condition, and did for a little while after it was passed, and then this idea that water competition was a dissimilar circumstance and condition, which would authorize a departure from the fourth section, occurred to somebody, and the controversy about that has raged ever since: but let me get down to the facts of a supposititious case, such as you suggested. Now, if you did not give Chicago the same rate as you gave New York, or one approaching it so nearly as would enable it to compete, there would not be any iron products

at Chicago to ship, would there? If the discrimination in favor of New York was great enough it would absolutely shut out any manufacturing of iron in Chicago.

Mr. DONNELLY. Of course, the manufacturer of iron at Chicago is not dependent upon the terminal market. It would have a market of its own. It would not have as broad a market. That is correct. Now, what harm is done?

The CHAIRMAN. What right have the people of Chicago to manufacture iron—what legal right, I mean, to such a condition as will enable them to manufacture iron? Why do you make a rate to Chicago?

Mr. DONNELLY. You mean why do we broaden Chicago's market?

The CHAIRMAN. Yes.

Mr. DONNELLY. Of course, it has a right to manufacture iron there and sell wherever it can, upon rates the propriety of which you would not question.

The CHAIRMAN. I agree to that. What right has Chicago to a rate which will enable it to reach the terminal markets?

Mr. DONNELLY. Now, it has the right which arises from the fact that here is a carrier prepared to accord to that rate, in addition to doing so, and in doing so, to add thereby to its own net revenues, and proportionately to reduce the burden which must be borne by other intermediate communities, because if the sum of the net revenues of the carrier was not sufficient, and it must forego this business, and must thereby lose this revenue, of course, theoretically, that increases the burden upon the other communities which can be served only by the rail carrier. Now, Chicago's right to this rate—if you want to call it a rate—as I say, arises from the fact that there is a carrier prepared to accord it, and that no possible wrong can accrue to any intermediate community by reason of Chicago getting it.

Senator POMERENE. You are a lawyer. That same carrier goes through Reno.

The CHAIRMAN. Yes; that is just what I was going to follow up with.

Senator POMERENE. Now, then, why does not your reason, and it is clever—why does not it apply to the manufacturer in Reno as well?

Mr. DONNELLY. It does.

Senator POMERENE. Why should he be penalized because he is closer to San Francisco than the Chicago manufacturer?

Mr. DONNELLY. It does apply as well to the Reno manufacturer. Senator Pomerene.

Senator POMERENE. Yes; you acknowledge the principle, but you deny it in practice.

Mr. DONNELLY. Of course, in the specific instance, there is no opportunity of applying it in practice.

The CHAIRMAN. I am going to make just this one suggestion. You say that the carrier is there ready, with its road and its engines and its cars, and the iron is manufactured at Chicago for the terminal market, and he might as well carry it at that rate and make what you call the out-of-pocket cost. Well, the reason that it is there is because you make that rate. They could not make that iron, if that occurred, unless you gave them a rate that you would enable them to compete with New York. Now, you have got your cars and your

engines and your railroad tracks in Reno, in Denver, in Pueblo, in Spokane, in Greensboro, N. C., and all of the intermediate points that are discriminated against, in many of which, and perhaps in all of which, industries would be developed, business would be enlarged, if you made a rate such as you speak of from Chicago that would enable them to compete with the other points; you have got your road and your engines and your cars to carry them; why don't you give them those rates?

Mr. DONNELLY. We will take the suppositious rate of \$1 from Chicago, made in order to meet a water competitive rate from New York. You say the practice of the carrier in giving that rate may operate to discourage manufacturers at intervening points—intermediate points—from establishing like manufactories.

The CHAIRMAN. No; only to discourage them.

Mr. DONNELLY. But that overlooks, Senator Poindexter—that overlooks the fact that here is the carrier, prepared to serve that terminal community from New York at that \$1 rate. The terminal—Seattle, San Francisco—is not concerned with this rail rate. I mean now from the theoretical standpoint. Practically, of course, it is concerned in being served by two carriers, rather than one, but theoretically it gets this article for \$1 from New York, whether the carrier makes that rate from New York or not.

The CHAIRMAN. Now, let me ask you another question, as representing the railroads. Would you say that you are satisfied with 7 per cent net operating profits? Now, if the rate-making authorities of the Government give you such rates, without allowing discrimination between the long and the short haul, such as now exist, as to earn you 7 per cent profit, what difference does it make to you if you get your 7 per cent profit upon a uniform system of rates, instead of upon a discriminatory system?

Mr. DONNELLY. That carries the discussion into——

The CHAIRMAN. You are in the business for the money you make out of it, and if the Government allows you a reasonable profit, why should any carrier insist upon discrimination between communities. any more than discrimination between individuals?

Mr. DONNELLY. Now, I will just say this. This carries the discussion into a little wider field than I had expected it to cover, but beyond the shadow of a doubt, if you assume this definite, fixed quantum of return as being just and reasonable, and the carrier by any system of rates is assured of that, it does not make a particle of difference as to its retention of this right to make a lower rate for the longer haul. You are entirely correct about that, Senator Poindexter. At least, I say so, speaking for myself.

Mr. LYON. Senator, could I ask Mr. Donnelly just one question, with his permission?

The CHAIRMAN. Yes.

Mr. LYON. It is the purpose of the railroad in making these market competitive rates from Chicago and Pueblo to get revenue for moving traffic which would otherwise go to the boat lines? Is not that the real purpose?

Mr. DONNELLY. Get revenue from traffic which would otherwise go to the boat lines?

Mr. LYON. Yes.

Mr. DONNELLY. Of course, specific traffic from Pueblo or Chicago would not, but it is for the purpose of delivering to the consumer at San Francisco a shipment which, if we did not make that rate, he would obtain in New York and move by water to San Francisco.

Mr. LYON. Without decreasing the water transportation?

Mr. DONNELLY. It does; yes.

Mr. MCCARTHY. What is the necessity of a lower rate, if it is purely to meet water competition—a lower rate from Pueblo than from Chicago or New York?

Mr. DONNELLY. The lower rate from Pueblo and the towns that are closer to the Pacific coast has always been justified upon the ground of increased manufacturing expense in that region.

Mr. MCCARTHY. Then it is not purely the water competition?

Mr. DONNELLY. No.

Mr. BARTINE. Mr. Donnelly, assuming that the \$1 rate which you have mentioned to the coast will just barely cover out-of-pocket cost, and suppose you are carrying a very large tonnage upon that basis of rates to the coast, does it not follow inexorably, then, in order for you to obtain a fair return upon the value of your property, the great burden must be thrown upon the interior?

Mr. DONNELLY. It does inexorably, Judge Bartine, and it follows inexorably that the burden upon the interior would be still greater if you did not do it.

Mr. BARTINE. That is your idea?

Mr. DONNELLY. That is obvious.

The CHAIRMAN. Is there anything further. Mr. Shaughnessy?

Mr. SHAUGHNESSY. Yes, sir, Mr. Chairman. In answer to the position taken by Mr. Donnelly in behalf of the carriers I want to give reference to the speech of Hon. William F. Bennet, Member of Congress from New York, before the House of Representatives on March 1, 1910, which answers the other side of the question to that portrayed by Mr. Donnelly, and it answers specifically his contention that the out-of-pocket cost rates and the right of the carriers to fill up their trains with traffic that they would not otherwise get because the train expense is fixed and they can take the traffic at less than the general traffic going along in the same train. Now, this argument would be good if it applied to all traffic, but when an effort is made to single out particular classes of traffic it works irreparable injury and harm to various communities and shippers and unduly favors the large industrial centers and gives to the railway traffic manager a power greater than that exercised by a sovereign State, or, in fact, many States which may come within the rate adjustment which he prescribes.

The CHAIRMAN. Well, you are not contending for a blanket or uniform rate, regardless of the distance?

Mr. SHAUGHNESSY. Well, not exactly regardless of distance. Mr. Chairman, but I believe a rate system might be worked out whereby on the long-haul traffic the blanket rate uniformly applied would work admirably. In fact, the railways themselves have, on practically all traffic moving from points of production to the markets, made rates upon such a basis. This is largely true from all the intermountain and Pacific coast territory on eastbound traffic, and on

this traffic no back-haul charges are assessed against the people of Indiana, Ohio, Pennsylvania, and New York State in the East, as compared to the Atlantic coast terminal points, but when the traffic reverses and begins to move from the East to the West we find the railway traffic manager blanketing the rates to the Pacific coast terminals, but maintaining the discriminatory back-haul charges throughout all of our intermountain States, and this is what we complain of. In other words, Mr. Chairman, the railway traffic manager's system is such that he says in effect, "We will help you people of all intermediate and producing territory to develop productively, but industrially we will tell you where these industries may be located and where they shall not." That, in effect, illustrates why we are here.

THE CHAIRMAN. Can you state offhand the tonnage produced annually by your State of Nevada or other States in the intermountain country? I understand yesterday Senator Freehafer, of Idaho, stated that the annual production of Idaho amounted to 5,000,000 tons; is that the amount?

MR. FREEHAFFER. Yes, sir; five million and a quarter.

MR. SHAUGHNESSY. No; I have not the tonnage with me from our State. That can be secured, however, later. Now, then, regarding out-of-pocket cost, I want to deal with that to some extent, as that has been emphasized so strongly by Mr. Donnelly. I want to show what the Nevada Railroad Commission has done in the Reno rate case in regard to this matter as illustrating and proving that the Pacific coast terminal rates, if applied at interior points, would be compensatory if measured on the basis of the cost of the service.

This testimony was put in before the Interstate Commerce Commission in 1908 and 1910, and in that case we submitted a very elaborate set of exhibits showing the cost of operation, and I want to put a résumé of that testimony before this committee at this time. Now, then, in this analysis I shall differentiate between the "average cost" of operation per ton-mile—the unit of traffic which is largely used in determining railway cost—and the actual cost of performing the transcontinental service with which we are dealing at this time. Heretofore the "average cost" has been almost exclusively referred to whenever it has been used by the Interstate Commerce Commission and by counsel for the railroads in their arguments before the commission. Manifestly, its use would be of little or no value because included within the average are all of the expenses for the higher cost local business. I shall therefore undertake to differentiate from the "average cost" and show as near as may be from my analysis the actual cost per ton-mile segregated and assigned to the transcontinental traffic moving in substantial volume across the country by itself considered.

MR. SHAUGHNESSY. For the year 1907 the average cost of operation per ton-mile on the Southern Pacific was shown to be approximately 7 mills, but this average cost includes very expensive operation over the Sierra Nevada, Tehachapi and Siskiyou Mountains, heavy local service in California, moving with light trainload and extensive branch line service, with regular freight service, but also light train loading, because the business on the branch lines is not sufficient to insure heavy train loading. While these conditions

contribute to a high average cost of operation per ton-mile, it is proper to mention that these high costs are amply taken care of by correspondingly high rates covering said local and branch line business.

When the whole situation is fairly considered, it can not be seriously contended that there should be any great difficulty in classifying the freight business, and assigning to fast time freight moving in maximum trainload lots, its true proportion of the cost of operation per ton-mile. Moreover, would it not be highly advantageous if the Interstate Commerce Commission would prescribe the necessary classification and division of costs as between freight and passenger business, and require the carriers to report under oath the ton-mile cost according to a classification of through freight, local freight, branch line freight, and general average all-freight business?

In this connection, it may be said that the carriers at the present time report only the general average cost per ton-mile.

Fortified with this information it is our impression that the Interstate Commerce Commission would have very little trouble in scientifically finding the reasonableness of rates covering the movement of a substantial volume of business. Of course, it is possible that this theory could not in all cases be applied in finding the reasonableness of a particular rate covering the movement of a low grade commodity, but it would prescribe a rule by which the commission could always measure by close approximation whether the rate was unduly high or low, considering the volume of business moving thereunder and other circumstances and conditions.

The Railroad Commission of Nevada has, by personal investigation made by members thereof, satisfied itself that the cost of moving westbound transcontinental freight from Ogden to Reno will not exceed $2\frac{1}{2}$ mills per ton mile, while from Ogden to San Francisco it should not exceed 3 mills. On May 24, 1910, two members of the Nevada commission—

Senator POMERENE. What is the distance from Reno to San Francisco?

Mr. SHAUGHNESSY. Reno to San Francisco, 240 miles. On May 24, 1915, two members of the Nevada commission made a personal check of a fast freight train, consisting of California and Asiatic freight moving eastbound, over 288 miles of the main line of the Central Pacific Railway, from Sparks to Carlin, Nev., and running 250 gross tons light of regular fast freight tonnage. They found that the cost of operation per net ton-mile, after charging the said train with an average pro rata of maintenance of way, maintenance of equipment, traffic, transportation, and general expenses, was only 2.26 mills per ton per mile. That 2.26 is to be compared with the general average cost of the Southern Pacific of 7 mills per ton per mile. That shows the difference in cost of operating these through transcontinental trains, moving with heavy tonnage and without breaking bulk in transit and over long hauls, as compared with the general average of the haul of all freight, local and otherwise.

The CHAIRMAN. What application are you seeking to make of that criterion in this hearing?

Mr. SHAUGHNESSY. I am going to show in a general way from this what the cost of operation is per ton from New York, Pittsburgh, Chicago, and other points, and I will show you before I get through the actual cost, and I will show—it will be a near approximation at least—of what the so-called out-of-pocket cost is that carriers are talking about.

The CHAIRMAN. When you get that, what are you going to do with it?

Mr. SHAUGHNESSY. I will contrast that, then, with the revenue produced by the present rates. For instance, \$20 per ton, covering the movement at present on all steel articles from Pittsburgh to San Francisco, Reno, and other territories.

The CHAIRMAN. \$20 a ton?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. Well, is that under the order that goes into effect to-day?

Mr. SHAUGHNESSY. To-day; yes, sir.

The CHAIRMAN. Not the old rates that existed heretofore?

Mr. SHAUGHNESSY. No, sir; but it will show this, Senator, in addition to that; it will show that on the very, very lowest rates that they made—the 55-cent rate, I believe it was—covering the movement of certain iron pipe from Pittsburgh, following the opening of the Panama Canal, that even that rate which they called greatly reduced on account of the water competition then existing, that that rate in and of itself, that \$11 rate is fairly compensatory, or very, very much in excess of anything that you would call out-of-pocket cost. It will also show you gentlemen what a range the carriers have in meeting water competition, if they are allowed to apply so-called out-of-pocket cost, and the Interstate Commerce Commission has said in its decision since you gentlemen amended this fourth section in 1910, that these carriers might apply and might be granted exemption from the fourth section on the basis of out-of-pocket cost rates.

Now, we can not get anywhere in meeting this kind of competition, neither can a steamship company nor a prospective steamship company, nor can anybody afford to invest any money in steamship companies, or in steamship stocks and bonds, with that kind of a handicap hanging over them.

The CHAIRMAN. Why is that? Is that for this reason, that the steamship company is compelled to pay dividends on its stock and interest on its bonds?

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. And this out-of-pocket cost does not pay any dividend on stock nor interest on bonds?

Mr. SHAUGHNESSY. No; not if taken on ground pleaded by the railroads—but it is my contention and I shall endeavor to prove that these so-called out-of-pocket cost rates are fairly compensatory and this being true, that there is no reason why there should be any higher rates at the intermediate shorter haul points.

The CHAIRMAN. All of the railroads do pay interest on their bonds, of course, else they would have to go out of business.

Mr. SHAUGHNESSY. Certainly.

The CHAIRMAN. Or the bonds would be foreclosed.

Mr. SHAUGHNESSY. Certainly.

The CHAIRMAN. And if they get nothing but the out-of-pocket cost at the terminals they have to get their interest and profits somewhere else?

Mr. SHAUGHNESSY. Yes, sir; that is true, and that is made up at the interior points undoubtedly. That is the answer to it, that it would be made up there. It would be made up at the interior points. But my position is that while they have been talking about this all of these years that we have been carrying this great amount of traffic to the Pacific coast terminals, at out-of-pocket cost rates, that they have not been carrying any traffic to the Pacific coast terminals at less than a fairly compensatory rate.

Senator POMERENE. I suppose, Mr. Shaughnessy, you intended to incorporate this table in the record.

Mr. SHAUGHNESSY. Yes, sir; I shall ask that it be incorporated later.

Senator POMERENE. I am afraid I will not be able to be here this afternoon, but I wanted to offer this suggestion to witnesses who are here: It developed during the colloquy this morning that there are railroad lawyers here, cross-continent line lawyers, and intermountain lawyers here representing shippers, etc., and also others representing the Director General. Now, thus far in the hearings there has been no comment upon either of the bills which are pending before this committee. If any of those present have any views as to whether or not there should be some amendment to the present law, section 4, or some modification to either of these pending bills, or both of them, I would like to have the benefit of their concrete suggestions, and have them incorporated in the record.

The CHAIRMAN. I think that would be a fine idea.

Mr. SHAUGHNESSY. Shall we suspend at this time?

The CHAIRMAN. We will suspend until 2.30 this afternoon.

(Whereupon, at 12 o'clock, a recess was taken until 2.30 p. m. of the same day.)

AFTER RECESS.

The subcommittee reassembled at 2.30 o'clock p. m. pursuant to the taking of recess.

The CHAIRMAN. We will proceed with the hearing, gentlemen.

STATEMENT OF MR. J. F. SHAUGHNESSY—Resumed.

Mr. SHAUGHNESSY. When we closed at noon, Mr. Chairman, we were discussing the matter of the cost of operation as shown by the Nevada commission before the Interstate Commerce Commission, and taking the Southern Pacific line as representative between Ogden and Reno, a distance of 538 miles.

I had shown that the general average cost of operation per ton-mile, as shown by the company, for the system as a whole, was 7 mills per ton-mile, and I now wish to show that in the Nevada rate case, *Southern Pacific v. Bartine et al.* (170 Fed. Rep., 725), that the Southern Pacific Co., through its auditor, Mr. C. B. Seger, showed that the cost of operation per ton-mile, as segregated to the Southern Pacific main line in the State of Nevada, was 4.28

mills per ton per mile, covering 452 miles of line, which is intermediate to Ogden and Reno. That is to be compared with the average of 7 mills per ton per mile for the system as a whole, but nothing was shown by which the cost of the through fast freight business, passing through Nevada, as if over a bridge, could be determined in contradistinction with business moving from points within the State to points without the State, and from points without to points within the State, and that which is purely intrastate or local.

Following that, the Nevada commission made an investigation of its own as to the cost of operation per ton-mile in trainload lots of this through long haul, transcontinental traffic, and the members thereof satisfied themselves that the cost of moving westbound transcontinental freight from Ogden to Reno will not exceed $2\frac{1}{2}$ mills per ton-mile, while from Ogden to San Francisco it should not exceed 3 mills per ton-mile.

On May 24, 1910, two members of the Nevada commission made a personal check of a fast freight train, consisting of California and Asiatic freight, moving eastbound over 288 miles of the main line of the Central Pacific Railway from Sparks to Carlin, Nev., and running 250 gross tons light of regular fast freight tonnage. They found that the cost of operation per net ton-mile, after charging the said train with an average pro rata of maintenance of way, maintenance of equipment, traffic, transportation and general expenses, was only 2.26 mills.

Considering that the business and the character of the grades from Ogden to Reno are such as to permit of a maximum fast freight train loading of 1,850 tons gross against the average fast freight tonnage of 1,500 tons from Sparks to Ogden, we may fairly assume that the said cost per ton-mile of 2.26 mills, if not somewhat too high, would at least be the maximum cost for the movement of westbound transcontinental freight from Ogden to Sparks. This was in 1910 and the train loading has increased substantially since then.

To find the average cost of operation per ton-mile from Ogden to San Francisco apply 2.26 mills cost per ton-mile to 538 miles, the distance from Ogden to Sparks, and we find the cost of moving 1 ton is \$1.215. Estimating the cost from Sparks westbound to San Francisco on the basis of these figures, we may begin by giving the 158 miles from Sparks to Sacramento a constructive operating mileage of 2 miles for 1 in order to compensate for expensive cost of operation over the Sierra Nevada Mountains. This will make the cost per ton-mile 4.52 mills, or a cost per ton of 71.4 cents. For the 90 miles from Sacramento to San Francisco, assume that the cost of operation is substantially the same with a small allowance for ferry service—say $2\frac{1}{2}$ instead of 2.26 mills per ton-mile, or a cost per ton of 22.5 cents. Aggregating these sums, we find the cost of moving 1 ton from Ogden to San Francisco is \$2.154, which, when divided by the mileage, 786, gives an average cost per ton-mile of 2.75 mills.

This testimony stands uncontradicted. It has never been met by the carriers, nor has the Interstate Commerce Commission ever made any effort to establish the reasonableness of the rates on the so-called out-of-pocket cost, or the so-called out-of-pocket cost by ascertaining and contrasting the cost of the westbound transcontinental service by itself considered. On the contrary, the commission has been content

to reach its conclusions by reference to average cost, rate comparisons, sufficiency of earnings, and other considerations.

The Nevada commission has, from the first, had its case squarely made on this cost of service basis, but we have never secured a ruling on this feature of our case before the Interstate Commerce Commission. Recognition of the pertinency of our analysis is noted in the opinion, and exemplified by the Interstate Commerce Commission, taking six pages from my brief and incorporating it as an appendix to its decision of June 22, 1911, in case 205 et al. I offer pages 379 to 385 of said decision, marked "Appendix D," and ask that it may be of record at this point, because it clearly portrays the scientific ascertainment of revenue and cost to freight traffic moving westbound from Ogden to Reno in 1908 and 1910, and upon which we made this cost analysis.

The CHAIRMAN. Very well, it may be included in the record.

(The appendix referred to is here printed in full, as follows:)

APPENDIX D.

[From brief of J. F. Shaughnessy for Railroad Commission of Nevada.]

COMPLAINANT'S EXHIBIT No. 47.—Showing shipments moving to Reno from eastern territory via Ogden gateway in calendar year 1908, showing point of origin, total receipts under present rates, receipts under rates proposed, receipts of Southern Pacific Co. under present rates, and receipts of Southern Pacific Co. under rates proposed; statement also shows receipts per ton per mile on total movement under present rates and receipts per ton per mile under rates proposed, receipts per ton per mile of Southern Pacific Co. under present rates and receipts per ton per mile of Southern Pacific Co. under proposed rates.

[Groups, classification, tonnage, and revenue, including Southern Pacific Co.'s proportion, taken from the waybills in Reno freight office of the Southern Pacific Co. by the Railroad Commission of Nevada.]

1	Weight in tons.		4	5	6	7	8	9	10	11	12
	2	3									
Originating in group—	C. L.		Total.	Total revenue under present rates.	Total revenue under proposed or terminal rates.	Revenue of Southern Pacific Company under present rates.	Revenue of Southern Pacific Company under proposed or terminal rates.	Receipts per ton per mile under present rates on total haul.	Receipts per ton per mile under proposed or terminal rates on total haul.	Receipts per ton per mile Ogden to Reno under present rates.	Receipts per ton per mile Ogden to Reno under proposed or terminal rates.
	L.	L.									
B.	183	70	253	\$10,634.21	\$6,619.86	\$5,990.18	\$1,965.83	1.3107	0.9001	4.2680	1.4200
C.	2,080	685	2,715	102,043.44	66,770.65	58,133.15	22,802.36	1.4450	0.9499	3.9632	1.5300
D.	1,207	507	1,714	89,631.20	65,255.18	50,029.20	26,063.18	1.5728	1.1452	3.3514	1.7168
E.	1,970	173	2,143	62,043.16	49,425.39	34,041.32	21,423.55	1.8094	1.4416	2.8980	1.8176
F.	1,891	99	1,990	64,184.73	61,093.41	36,787.81	29,222.52	2.2049	2.0572	3.3222	2.2949
G.	1,668	11	1,677	26,349.23	25,577.35	13,569.74	12,785.09	1.2091	1.1731	1.4710	1.2962
H, I, J.	619	44	663	16,842.70	10,442.11	11,467.56	5,066.97	2.3082	1.4311	2.1431	1.3688
Wheat, salt, barley, cement, and coal from Idaho, Utah, and Wyoming.			11,177	78,679.92	79,679.92	56,008.44	59,008.44	.7925	.7925	.9033	.9033
Total.	23,322	23,322	46,644	154,313.00	383,865.23	298,516.40	179,037.94	1.3400	1.1156	2.0833	1.3679

Average cost per ton per mile for operating expenses (less Ogden to Reno, 4.88 mills).
 Average cost per ton per mile for operating expenses (less Ogden to Reno, 4.88 mills).
 Average receipts per ton per mile on entire Central Pacific Railway, 7.05 mills.
 Average receipts per ton per mile on Southern Pacific system, 1.21 cents.
 Average revenue upon each ton Ogden to Reno under present rates, \$11.31.
 Average revenue upon each ton Ogden to Reno under proposed or Pacific coast terminal rates, \$7.63.

LOW-GRADE PRODUCTS.

Referring to this exhibit, attention may be directed to the fact that 56 per cent of the total tonnage (23,322) consisted of low-grade products, and were as follows:

	Tons.		Tons.
Coal.....	5,225	Oats.....	495
Wheat.....	4,834	Barley.....	339
Cement.....	1,242	Grits.....	200
Marble and stone.....	445	Lumber.....	69
Brick.....	103		
Salt.....	370	Total.....	13,101
Corn.....	278		

Out of the 13,101 tons of low-grade products it will be noted by reference to the bottom column of Exhibit No. 47 that 11,177 tons of said products moved into Reno from Idaho, Utah, and Wyoming at rates which did not exceed Pacific coast terminal rates.

The footnote on bottom of Exhibit No. 47 shows the average receipts per ton-mile on the Southern Pacific for the year 1909 as 1.21 cents. In comparison therewith attention is directed to column No. 10, Exhibit No. 47, wherein is shown receipts per ton-mile covering movement of freight from each group territory, at Pacific coast terminal rates, with total average receipts of 1.1156 cents, or in other words, this would be the receipts accruing if the business moved through to San Francisco. Column 12 shows receipts per ton-mile covering actual movement of freight from group territories, at proposed or Pacific coast terminal rates to Reno, with a total average of 1.3879 cents or 1.58 mills in excess of the average receipts for the Southern Pacific system as a whole.

Of course, at Winnemucca and, in fact, all main-line points east of Reno to the Nevada-Utah State line the excess receipt per ton-mile over the average for the system as a whole will be correspondingly greater as we move eastward, or rather as the haul from Ogden westward is shortened. On the basis of this comparative revenue showing alone it is conclusive that the application of Pacific coast terminal rates to Southern Pacific main-line points in Nevada would be more than compensatory.

COST OF OPERATION BETWEEN OGDEN AND SPARKS.

Regarding the cost of operation between Ogden and Sparks based upon the total west-bound movement of freight for the 11 months ending November 30, 1908, furnished by Mr. T. F. Rowlands, assistant superintendent Southern Pacific Co. at Sparks, Nev., upon request of the Railroad Commission of Nevada, and the revenue per ton accruing from Ogden to Reno (Reno being 3 miles west of Sparks), predicated upon the actual movement of 23,322 tons of westbound freight received at Reno from all eastern territory for the calendar year 1908, it may be stated that a detailed showing is made in complainant's Exhibits No. 37, 44, 47, and 48.

Before contrasting the revenue to the cost of the service, we shall, for convenience, set forth herein recapitulated portions of said exhibits.

Total gross tonnage moved Ogden to Sparks, distance 538½ miles, January 1, to December 1, 1908, 1,816,346 tons.

This tonnage was moved in 51,845 cars and 1,279 trains.

Average weight of car used in finding net weight of contents, 18 tons.

Gross weight of cars, 933,210 pounds.

Net weight of freight, 883,237 pounds.

For the year 1907 on the Central Pacific Railway, Mr. Seger shows that 79.3 per cent was commercial and 20.7 per cent was company freight.

Applying the same proportion for 1908 we find the commercial freight represented in the above tonnage is 690,407 tons.

Dividing 1,279 trains into the above commercial freight tonnage, we have an average of 539.9 tons per train.

The average cost of operation per freight-train-mile on the Central Pacific Railway in 1907 (as shown by Seger) was \$2.36.

The average cost of operation per train-mile on the Central Pacific in 1907 (as shown by annual report) was \$1.77, while the average cost in 1908 is shown to be \$1.989, or an increase in cost of 12.36 per cent.

Applying the 12.36 per cent increase to the \$2.36, and we find the average cost of operation per freight-train-mile for the year 1908 is \$2.65.

Applying \$2.65 cost per freight-train-mile to the number of miles, Ogden to Sparks, 538.5, and we find the average cost of operation (all expenses) of moving one train from Ogden to Sparks is \$1,427.02.

Dividing 539.9 tons per train into \$1,427.02, the cost per train, and we find the average cost of operation per ton of commercial freight from Ogden to Sparks is \$2.64, or if further divided by 538.5, the mileage, 4.88 mills per ton-mile.

[NOTE.—If the company freight was included the average per train would be 690 tons instead of 539.9, and divided into \$1,427.02, the cost per train, we find the average cost of operation per ton from Ogden to Sparks is \$2.08, or if divided by 538.5, the mileage, 3.85 mills per ton-mile.]

The Southern Pacific Co. received as its proportion of the rates covering the movement of 23,322 tons of commercial freight from all eastern territory to Reno in 1908 an average revenue of \$11.51 per ton, or 4.3 times the average cost of service from Ogden to Reno.

If rates no higher than Pacific coast terminal rates had been in effect to Nevada main-line points, and covered the movement of the said 23,322 tons of commercial freight from Ogden to Reno in 1908, the average revenue accruing to the Southern Pacific Co. would have been \$7.63 or 2.9 times the average cost of service.

Briefly, the foregoing deductions indicate the scientific and conclusive manner in which the earnings and expenses covering west-bound business have been segregated and assigned to the Central Pacific mileage from Ogden to Sparks.

COST AND REVENUE.

Applying the average operating expenses of 4.88 mills per ton per mile to Nevada main-line points according to respective distances of west-bound haul from Ogden, and contrasting therewith \$11.51 and \$7.63, the average revenue heretofore shown, the results obtaining are interesting and instructive.

The following tables express the matter forcefully:

TABLE NO. 1.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 4.88 mills per ton per mile.	Average revenue per ton on basis of actual amount received from westbound business at Reno, 1908.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	<i>Miles.</i>				
Tecoma, Nevada-Utah State line	113.5	\$0.53	\$11.51	4.6	95.4
Cobre	137.5	.67	11.51	6.0	94.0
Wells	174.8	.85	11.51	7.5	92.5
Elko	226.3	1.10	11.51	9.5	90.5
Fallsade	256.6	1.23	11.51	10.7	89.3
Battle Mountain	306.5	1.49	11.51	13.0	87.0
Golconda	348.3	1.69	11.51	14.7	85.3
Winnemucca	365.0	1.78	11.51	16.0	84.0
Imlay	398.0	1.94	11.51	17.0	83.0
Lovelock	438.0	2.13	11.51	18.5	81.5
Hazen	494.2	2.41	11.51	21.0	79.0
Reno	540.0	2.64	11.51	23.0	77.0

NOTE.—It will be observed that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Compare these figures with those in columns 5 and 6. They indicate conclusively that the old rates are grossly exorbitant.

TABLE No. 2.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 4.88 mills per ton per mile.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	<i>Miles.</i>				
Tecoma, Nevada-Utah State line.....	113.5	\$0.53	\$7.63	7.0	93.0
Cobre.....	137.5	.67	7.63	9.0	91.0
Wells.....	174.8	.85	7.63	11.0	89.0
Elko.....	226.3	1.10	7.63	14.5	85.5
Pallsade.....	256.6	1.23	7.63	16.0	84.0
Battle Mountain.....	306.5	1.49	7.63	19.0	81.0
Golconda.....	348.3	1.69	7.63	22.0	78.0
Winnemucca.....	365.0	1.78	7.63	23.0	77.0
Imlay.....	398.0	1.94	7.63	25.5	74.5
Lovelock.....	438.0	2.13	7.63	28.0	72.0
Hazen.....	494.2	2.41	7.63	31.5	68.5
Reno.....	540.0	2.64	7.63	34.5	65.5

NOTE.—Attention is directed to the fact that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Contrast these figures with those in columns 5 and 6 and they indicate that Pacific coast terminal rates applied at Nevada main-line points are unreasonably high and more than a fair compensation.

The following table is made on the basis of 3.85 mills per ton per mile, the average cost of operation covering the movement of all freight business (company and commercial) from Ogden to Sparks in 1908. Cost of operation per ton is shown from Ogden to Nevada main-line points, after which the cost is compared with \$7.63, the average Pacific coast terminal rate revenue, and the operating results set forth in percentages.

TABLE No. 3.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 3.85 mills per ton per mile.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	<i>Miles.</i>				
Tecoma, Nevada-Utah State line.....	113.5	\$0.45	\$7.63	6.0	94.0
Cobre.....	137.5	.53	7.63	7.0	93.0
Wells.....	174.8	.67	7.63	9.0	91.0
Elko.....	226.3	.87	7.63	11.5	88.5
Pallsade.....	256.6	.975	7.63	13.0	87.0
Battle Mountain.....	306.5	1.18	7.63	15.0	85.0
Golconda.....	348.3	1.34	7.63	17.5	82.5
Winnemucca.....	365.0	1.40	7.63	18.5	81.5
Imlay.....	398.0	1.54	7.63	20.0	80.0
Lovelock.....	438.0	1.68	7.63	22.0	78.0
Hazen.....	494.2	1.90	7.63	25.0	75.0
Reno.....	540.0	2.08	7.63	27.0	73.0

NOTE.—The above table shows that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Contrast these figures with those in columns 5 and 6, and the result is clear at a glance.

The following table is made on the basis of 7 mills per ton per mile, the average cost of operation (all expenses) of the commercial freight business of the Southern Pacific system as a whole. Included therein is the extraordinarily expensive operation of the freight-train service over the Sierra Nevada, Tehachapi, and Siskiyou Mountains, numerous branch lines, local freight-train service, and the expenses incidental to the handling of company freight, the tonnage of which did not enter into the calculation in finding the average commercial ton-mile cost.

The CHAIRMAN. That is part of the expense, I should think, of operation.

Mr. SHAUGHNESSY. It is part of the expense, but the effort is made by the carriers to localize the out-of-pocket cost to the mere transportation expenses, as I gather it.

Mr. WOOD. When and in what case did the carriers make that contention?

Mr. SHAUGHNESSY. You always made that contention. If you ever made any other contention, I should like to have you explain it at this time.

Mr. WOOD. We never made such a contention.

Mr. SHAUGHNESSY. What is your contention, then, on the out-of-pocket expense?

Mr. WOOD. While I believe the contention has been that the out-of-pocket cost is what might be regarded as the cost of carrying this traffic as additional tonnage, we have never contended that among these elements of cost was not some allowance for wear and tear on rails and wear and tear on equipment, just as expressed by the Senator. There is nothing in the record here to indicate, or before the commission——

Mr. SHAUGHNESSY. I am very glad to have you confirm that view of the matter. Now, then, what proportion of the total operating expense would you consider that to be?

Mr. WOOD. I could not say. The Interstate Commerce Commission has made an investigation on the subject in a case known as the Schedule C case, which is the case that arose immediately after the opening of the Panama Canal. It made an analysis of that matter, the results of which are set forth in the opinion, notwithstanding the fact that the statement has been made here that the commission has never analyzed that, that appears definitely in the opinion. They made another analysis in another one of these cases, and those cases will speak for themselves. I do not carry in mind what those percentages are.

The CHAIRMAN. Let me ask you, Mr. Wood, the purpose of that analysis was to ascertain what the out-of-pocket cost was?

Mr. WOOD. Yes, sir.

The CHAIRMAN. And why did they want to ascertain the out-of-pocket cost?

Mr. WOOD. The first purpose of that analysis was this, in order to see whether the rates which the carriers proposed, in order to enable them to meet the competition of the ships at the terminals, was so low that they were below the cost of the service, and would consequently involve an out-of-pocket expense to the railroad companies which would not be recouped out of the rates, and therefore cast a burden upon the remaining traffic. The position of the railroad companies was that here was business moving to the Pacific coast terminals, which they must carry at water competitive rates, or not carry at all. Now, the analysis was made for the purpose of determining whether if they did carry it the revenue derived from it would be in excess of the cost of carrying an additional tonnage, and therefore would contribute something to the fixed expenses, and the fixed charges, and the payment of dividends, and so forth, because, obviously, if it would not pay any more than the total cost of handling it, there was no object in taking it. On the other hand, that

if it would pay something more than the cost of handling the business as additional traffic, it made that much of a contribution to the expenses which did not fluctuate in traffic, such as a certain proportion of maintenance and the overhead expenses, general expenses, and interest and dividends. That was the purpose of the analysis that was made.

Mr. CAMPBELL. Mr. Wood, do you claim that the commission made an analysis of that out-of-pocket cost and showed what it consisted of, or did they merely state what the probable out-of-pocket cost was?

Mr. WOOD. I do not understand your use of the word "analysis." We all realize, of course, it is not mathematically possible to ascertain the exact cost of conducting a particular part of the traffic of a railroad. It must be made by an examination of the accounts, and upon the basis of certain assumptions which students of the question consider as being well grounded. Now, in the latter sense, the commission made an analysis of the accounts of the carriers, the result of which is set out in the opinion in the Schedule C case, and subsequently in connection with the eastbound applications of the Southern Pacific Co., examined in even more detailed analysis, which had been made by the operating officials of the Southern Pacific.

The CHAIRMAN. Did they include in that the cost of purchasing of engines and construction of roads?

Mr. WOOD. No sir.

The CHAIRMAN. The railroad contended then that they should be allowed to make a rate on account of this water competition which did not include those items I have just mentioned?

Mr. WOOD. No; they did not include any allowance on what might be called capital account. The analysis was intended to disclose, as well as possible, the cost of handling this additional business over an existing plant which was not worked to its full capacity.

The CHAIRMAN. I think I understand what your proposition is, and as I understand it, quite frankly stated, it was just for the purpose of removing any doubt of one of the elements in the proposition as to whether or not the railroads and the commission contended for a policy which would allow them to meet water competition by a rate which was only enough to pay the out-of-pocket cost.

Mr. WOOD. Not that.

The CHAIRMAN. What was it?

Mr. WOOD. Because, obviously, Senator, there would be absolutely no profit in the transaction to the railroad companies.

The CHAIRMAN. They wanted something in addition?

Mr. WOOD. They wanted something in addition.

The CHAIRMAN. How much in addition to it?

Mr. WOOD. Well, necessarily varying with the ocean rate and the character of the traffic. Anything over and above the out-of-pocket cost is a contribution to the permanent expenses, the fixed charges.

The CHAIRMAN. Then that is the proposition, that so long as it was more, any amount more than that?

Mr. WOOD. So long as it was more than that it would not cast any undue burden upon other traffic, or involve any increased expense. Now, as a matter of judgment and business policy, of course, as to how much more should be taken to make it worth while to take that business—

Mr. SHAUGHNESSY. How much less than the full operating expenses; is not that it?

Mr. WOOD. I should not say so, Mr. Shaughnessy. I would rather refer you to the findings of the commission in the case and the mathematical problem, which will answer your question.

Mr. CAMPBELL. Right there I should like to say that notwithstanding the statement made by Mr. Wood I desire to reiterate that in these cases the Interstate Commerce Commission has never made an analysis of out-of-pocket cost. It is true that in one of the cases they do mention that a certain amount per ton possibly covers the out-of-pocket cost, but there is no analysis of what that out-of-pocket cost consists of.

Mr. SHAUGHNESSY. They have never made a cost analysis.

The CHAIRMAN. That will all be verified by the record, whatever it is, and there will be opportunity for anybody to show just what the record shows.

Did you wish to say something, Judge Bartine?

Mr. BARTINE. The suggestions of the other people pretty nearly cover it, but I want to say, Mr. Chairman, that while I have not broken in on these hearings very much there is probably no one here in Washington who feels a deeper interest, or who has been more active than I, in my small way, in these matters. I have acted as attorney for the Nevada Commission for nine years; I have been closely connected with my friend, Mr. Campbell over there. I think he will admit that I have done some little things in connection with these cases; that if what I have done were taken out of the record it would make quite a little hole, perhaps.

I have been present at, I fancy, a dozen of the hearings of the Interstate Commerce Commission, and I have never heard a suggestion from that commission, and I have never read an opinion from that commission in which the smallest consideration has ever been given to the wear and tear on the track and equipment, or anything of that kind, and when these cases have gone to the Supreme Court of the United States they have turned upon that point, that the rates charged at the terminal points, which are assumed to be not fairly remunerative, were to be justified because they would bring something more into the treasury than they actually took out in the movement of the freight, but there has never been an attempt made to carry into that equation the wear and tear upon the track or the equipment, so far as I can recollect.

The CHAIRMAN. Let me ask you if the result of that, whether it is wise or unwise, would be to give the coast cities and the railroads—I mean the users of the railroads—a rolling stock free of charge, would it not?

Mr. BARTINE. You do not have to ask me that question. Of course, if they are carrying their traffic west of Reno or west of Spokane at nothing more than just out-of-pocket cost, they might better make their terminals at Spokane and Reno.

The CHAIRMAN. I should think it would be very profitable property for the people served by it if they do not have to contribute anything toward building it and do not have to contribute anything for equipment or rolling stock.

Mr. BARTINE. I do not want to break in on Brother Shaughnessy's statement. I have only done that because so many others have done it.

The CHAIRMAN. I was not thinking of sidetracking him, or anything of that sort.

Mr. SHAUGHNESSY. No; I do not consider that anybody has done that. But I want to retrace my statement up to the point of the correction made by Mr. Wood, if it be a correction. I will stand corrected upon that basis, and I will proceed from the standpoint of the cost of moving this freight from New York and other eastern points to Pacific coast points upon the basis of the actual cost per ton-mile moved in trainload lots.

As before stated, the average cost of moving transcontinental traffic from New York, Pittsburgh, and Chicago may be fairly said to be 2.74 mills per ton-mile, the estimated cost from Ogden to San Francisco, and as shown by my testimony before the Interstate Commerce Commission in said case, 205, et al., gives the following results:

New York to San Francisco, a distance of 3,200 miles, the full cost per ton will be \$8.17; from Pittsburgh to San Francisco, a distance of 2,750 miles, the full cost per ton will be \$7.52; from Chicago to San Francisco, a distance of 2,279 miles, the full cost per ton will be \$6.25; and from Kansas City, a distance of 1,800 miles, the full cost will be \$4.93 per ton.

Now, then, contrast with those costs per ton the average charges that have been referred to in the past as merely out-of-pocket cost rates or out-of-pocket revenues, not producing just and fair compensation to the carriers, and were forced and compelled, and are the so-called out-of-pocket cost rates, namely, the rate on structural steel of \$13 from Pittsburgh and of \$15 per ton from New York. It is evident that they are not only compensatory, but that rates in excess thereof are excessive on that basis. When you come to contrast the rate of \$15 per ton from New York to San Francisco with the cost of \$8.17 per ton, you will find that the difference between \$8.17 and \$15 leaves a very fine margin of profit and proves conclusively that that is a highly compensatory rate, notwithstanding that these gentlemen have been contending strenuously that those are out-of-pocket rates.

Likewise, you take the rate of \$13 per ton, which at one time was in effect from Pittsburgh to San Francisco, and contrast that with the average cost of \$7.53, and again you have a very fine margin of profit.

I think these rates show clearly that the so-called out-of-pocket cost business to the Pacific coast terminals is highly remunerative.

Summarizing, I want to say that what I have said regarding segregated cost and reinforcing what I have said as to the justice of making a segregation in the classification of operating cost and illustrating the fallacy of using the average operating cost, as has so often been done before the Interstate Commerce Commission, that what I have shown here and what I am contending for is strongly supported and clearly illustrated by the carriers' own methods of classification and segregation of expenses when they have occasion to go into the courts for the purpose of overturning legislative and commission made State rates.

For example, let me exemplify by again referring to the Nevada rate case, 170 Fed. Rep. 725. Mr. E. E. Calvin, then general manager of the Southern Pacific Co., made an affidavit which forcefully emphasizes the distinction that is made by the carriers between the average and the actual cost. I read from his affidavit as follows—

Mr. MANN. That is, Mr. Seger?

Mr. SHAUGHNESSY. Yes; this is the so-called Seger affidavit, the famous Seger affidavit.

The factors of principal importance in determining cost of transportation are volume of traffic, density of traffic, and length of haul. By volume of traffic is meant the total carrying business of the railroad expressed in units of traffic, as, for instance, tons carried 1 mile. By density of traffic is meant the volume of traffic per single mile of road. The importance of these factors, in determining the cost of transportation, is due largely to their effect upon the trainload. Train expense is largely a fixed expense. The greater the trainload or traffic hauled per train-mile, the less the expense per unit of traffic. With a small volume of traffic and a short haul, heavy or adequate loading of trains is impracticable, and thus the expense of operation per unit of traffic is much greater than where the magnitude of traffic is sufficient to permit of the heavy loading of trains.

He is justifying and endeavoring to show why the rates are lower on their through interstate traffic, and why, likewise, they are so much higher upon our local traffic, which we were trying to reach, and which they are contesting in the courts.

Local business is relatively short haul traffic and of small volume. This appears from the showing hereinbefore made. Hence it is that the cost of local freight business of the company in the State of Nevada is relatively higher than the cost of business of the company as a whole, and the proportion is fairly stated as three to one. The preponderance of through business in the State of Nevada over local business is strongly marked as shown by the revenue returns hereinbefore set forth, and so far as the cost of local business per unit of traffic in the said State of Nevada on said system is concerned, the proportion as against the general business will considerably exceed three to one. In these proportions, the basis is limited solely to the cost per unit of traffic of so much of the expenses of operation as relate to the cost of conducting transportation.

That, Mr. Chairman, was the Southern Pacific Company's defense of the very much higher freight rates that we had within the State of Nevada locally than were named across the State on the interstate traffic, and they were there justifying those local rates, and they justified them on the ground of the language just read into the record.

Further, now, as showing the railroads' contention that the system devoted to the local service within the State of Nevada was not greater than reasonably necessary, and wholly aside from the great interstate business that this corporation was doing, the affiant makes the following affidavit:

The cost of construction of the railroad of said system in the State of Nevada, including the road to the Nevada & California Railway Co.—

And affiant intends all statements herein as to the Nevada & California Railroad Co. to have distributive interpretation also—

has not been and is not greater than should be expended in the construction of a railroad for local traffic therein, and as to the roadway and roadbed and bridges there would be no substantial difference in requirements, because of the local character of the road; nor, considering safety, efficiency, and duration, would there be any substantial difference as to the superstructures and track fixtures. In respect to these latter there would, in the case of through business, be some additional wear and tear, and the motor power would be furnished by engines of heavier type, but the increase in maintenance expense thereby would be overcome by the added capacity in the hauling of heavier loads and trains.

Now, Mr. Chairman, these pleadings mean, if they mean anything, that the company has established and maintains a great system, primarily on the basis of its local business and the exceedingly

high charges gathered therefrom, relatively speaking. Of course, this is not the fact and we have never had any very serious trouble in proving to the contrary in the courts. But that the local short-haul traffic within the State is much more costly than through long-haul traffic goes without saying, and I am here simply trying to illustrate that the railroads have no difficulty in segregating and assigning such cost when occasion demands; and I therefore contend that it is clearly manifest that these companies can make an assignment and show by very close figures just what the cost is of moving the through transcontinental traffic over these exceedingly long hauls from coast to coast. I also maintain that the Interstate Commerce Commission, with its great organization, would have no difficulty whatever in supervising the segregation and the assignment of such cost upon a just and reasonable basis, and that, measured by the cost of the service, these rates to the Pacific coast terminals have always been fully compensatory and that therefore the higher rates maintained at the intermediate points have been exceedingly unjust and unreasonable. The trouble has been, however, that the Interstate Commerce Commission has never measured the compensatory character of this west bound transcontinental business, moving as it does from 1,800 to 3,200 miles—the longest haul traffic in the world—without breaking bulk in transit; and how should it be measured? Why, just the same as the Government is doing to-day in requiring every industry that is doing war work on a cost plus 10 per cent contract basis, to segregate and assign the fair proportion of all expenses, no matter whether the industry may have been designed for and regularly engaged in the private manufacture of automobiles, plows, and corsets and many other lines. Now, it is no more difficult for the Interstate Commerce Commission to require and supervise the rendering of such segregated cost detail by the railroads than it is for the Ordnance Department of the Army to secure similar detail covering every thing it purchases at the present time.

Mr. McCarthy directs my attention to the fact that the examples I have used covering the movement of steel and iron from New York to San Francisco at \$15 a ton and from Pittsburgh to San Francisco at \$13 per ton is perhaps the lowest rated traffic moved, and therefore does not fairly express the average revenue per ton of freight traffic moving across the country between those points. I will say in this connection that following the commission's schedule C order of January 29, 1915, that our analysis of the tariff showed that all traffic from eastern defined territory to the Pacific coast terminals was on an average of \$15.63 per ton, carloads, and \$30 per ton on less than carloads.

The CHAIRMAN. This is to San Francisco?

Mr. SHAUGHNESSY. Yes, sir; applying the eastern defined territory rates to San Francisco on westbound traffic.

The CHAIRMAN. What is it to Reno?

Mr. SHAUGHNESSY. To Reno the general average was \$19.77 per ton on carloads and \$37.55 per ton on less than carloads.

The CHAIRMAN. You are citing these figures that you just gave in comparison with the \$13 and \$15 per ton on structural steel in order to show that the average rate was higher than that?

Mr. SHAUGHNESSY. Yes; that is the point. To show the average on all business would be considerably higher than \$13 and \$15, which I use as the revenue on that steel and iron.

However, these figures would need to be revised, and I do not know just what their average revenue per ton is from eastern defined territory to Pacific coast terminals at this time, but that was indicative at that time. Mr. Campbell, have you anything on that at this time?

Mr. CAMPBELL. No. I should like to ask you just one question. I want to ask you whether in all of your experience of these transcontinental cases you ever heard any railroad witness admit that any particular rate was reasonable in and of itself?

Mr. SHAUGHNESSY. No; there has always been something wrong with them. It never has been fully compensatory.

Mr. CAMPBELL. Take the rates which went into effect to-day; do you know whether the railroads claim that those rates to the Pacific coast are reasonable or less than reasonable?

Mr. SHAUGHNESSY. I did not attend the hearings in these increases under the fifteenth section, Mr. Campbell.

Mr. CAMPBELL. It would be true, would it not, if they were reasonable rates to the coast that they would be much higher than a reasonable rate to the interior, would they not?

Mr. SHAUGHNESSY. What is that?

Mr. CAMPBELL. It would be true if they were reasonable rates in and of themselves to the coast that they would be much higher than a reasonable rate to the interior?

Mr. SHAUGHNESSY. Yes, sir.

Mr. CAMPBELL. And if the rates which are in effect to-day to the interior are reasonable in and of themselves, then they are maintaining to-day, when the tariff went into effect to-day, rates to the coast that are still unreasonably low? Would not that be true?

Mr. SHAUGHNESSY. Yes. However, personally, I am not complaining because we have not got a proportional rate at this time.

Mr. CAMPBELL. That was not the purpose of the question. The idea was this question of out-of-pocket cost and reasonableness, whether or not the rates have ever been analyzed before the Interstate Commerce Commission by the railroads, to show what is out of pocket and what is required to pay dividends, and what was a reasonable rate.

Mr. SHAUGHNESSY. That is true. I want to refer briefly to the Shreveport case, Mr. Chairman, if I may. I wish to state in respect to the Shreveport case that the direct line mileage, Kansas City to Shreveport, is 562 miles, whereas the direct line mileage from Kansas City to Dallas, Tex., is 510 miles. On business from the north and east Shreveport enjoys a very much lower rate than does Dallas, and all northeastern Texas points. I think it was shown before the Interstate Commerce Commission that there was a differential of approximately 50 per cent against Dallas and in favor of Shreveport, and that differential was maintained, or those preferential rates were maintained to Shreveport under the plea of water competition, which has not existed for many years.

On that point I want to reinforce that statement by an excerpt from the Interstate Commerce Commission decision in the South-eastern Cases, 30 I. C. C., 263, as follows:

There is a disconnected service [he is speaking of the water service] between New York and Memphis. Regular boats ply between Natchez and Vicksburg and Memphis. The water competition is to be regarded as potential but not actual, and the testimony in this case indicates that any material ad-

vance in the rates from New York to Memphis will, without doubt, result in reestablishment of active competition on the Mississippi River.

The CHAIRMAN. Are they opposed to the establishment of the active competition?

Mr. SHAUGHNESSY. Apparently so.

The CHAIRMAN. Do they indicate in their opinion that that is the reason?

Mr. SHAUGHNESSY. They certainly do. I should like to read, for your information, another excerpt from that decision on that very same point, showing that the water competition, once actual and effective, is now nothing but potential, and that the Interstate Commerce Commission is not favorable to its reestablishment. In other words, they have taken the view of the railroads, as they have so often done in the past, regarding these matters:

It is evident that the rates and facilities afforded by the rail lines have had the effect of eventually attracting to these lines nearly all of the long-distance traffic between Ohio River points, Upper Mississippi River points, and Missouri River points on the one hand, and New Orleans on the other. There is no reason for believing that the rates to New Orleans, when established by the rail lines in 1887 and since maintained were not necessitated by an active, competing water competition. Without doubt the change in demands of commerce, the increased facilities of the railroads, their better organization and regularity of service have been instrumental in winning for them not only a share of that traffic but nearly all of the traffic. The water transportation, once actual and compelling, is still, however, potential, and it is most earnestly contended by the petitions herein that any substantial increase in the rates to New Orleans will have the effect of reestablishing water competition, with the consequent loss of traffic and revenue to the rail lines. It is represented that having secured this traffic through years of struggle [this is the representation of the railroads they are quoting], there is nothing in the fourth section of the act to regulate commerce, as amended in 1910, that puts upon the rail carriers an obligation to establish rates which will restore to the boat lines the traffic they have lost.

Therefore you can easily see, Mr. Chairman, that the fourth section, as amended in 1910, was very ineffective, as admitted by the Interstate Commerce Commission. And we have absolutely no security in our territory, nor have they throughout the intermediate States in southeastern territory. None whatever, and it is vitally necessary that we should be given relief by Congress.

The CHAIRMAN. Better organization and regularity of service, is that what it says?

Mr. SHAUGHNESSY. Yes; that it is what they say.

The CHAIRMAN. That would always operate in favor of the railroads, would it not?

Mr. SHAUGHNESSY. Yes, sir; that is, the railroads' natural advantage over the water carriers, that they have the increased facilities for serving the public.

The CHAIRMAN. Better organization and regularity of service would be an aid to them in competing with water lines, whatever system of rates might be adopted?

Mr. SHAUGHNESSY. Yes, sir.

The CHAIRMAN. That is all.

Mr. SHAUGHNESSY. Now, on this Shreveport case, Shreveport being 562 miles southeast of Kansas City, and Dallas being 510 miles. Shreveport has carload rates 40 per cent better than those to Dallas, and this is illustrated by the proceedings before the Interstate Commerce Commission in the Dallas Chamber of Commerce case, wherein

the Interstate Commerce Commission held out to the Dallas Chamber of Commerce that they would give them the relief when the first order was made in the Shreveport case. By the decision in that case the Interstate Commerce Commission reduced these rates from Kansas City and St. Louis \$1 per ton, and the relief granted to Dallas is illustrated by the item of newsprint paper from St. Louis to Dallas and Shreveport, the rate being \$8 to Shreveport it was allowed to remain at \$8, whereas to Dallas the rate was \$12, and the Interstate Commerce Commission only reduced it to \$11 per ton.

Recently the Interstate Commerce Commission has made a final decision in the Shreveport case, and, incidentally, they make a very fine argument there on our side of the question. I should like to read this excerpt into the record from that decision, rendered January 28, 1918, 48 I. C. C., page 370, as follows:

In making our report and order of July 7, 1916, we were not unmindful of their far-reaching effect. We were then and are now convinced that no attempt on our part to limit the scope of our order to a defined section in the eastern part of Texas would adequately meet the situation and extend to Shreveport the full relief to which that city was entitled. If a single city in Texas, whether large or small, near the border of the State, or near its center, were denied the benefit of the equality of rates from and to all points that is accorded to all other cities in that State, no possible doubt could exist regarding the resulting undue prejudice and disadvantage. It would manifest itself in the difficulty of attracting to such city commercial houses, industries, and population. To limit or restrict the area to and from which such city could ship on equal terms with other near-by points, while the entire area of the State was open to all other cities, would be to put upon such a locality an obvious disadvantage.

That is our argument here before Congress. It has been our argument before the Interstate Commerce Commission for years.

The commission makes this argument in justification of its action in the usurpation of the power of the Railroad Commission of Texas to control its own internal commerce. In other words, to so control its own internal commerce as to offset these interstate discriminative disadvantages to which I have just referred, and which have been maintained to Shreveport by long-and-short-haul rates, and which, if Texas had not, through the medium of its State railroad commission offset, Texas would not have been upon an equality, and have prospered as it has in the past.

There is another quotation in this Shreveport opinion which I shall read from page 371, as follows:

There are no transportation conditions justifying higher rates, distance considered, between Shreveport and Texas points than between points in Texas. The only apparent reason for the exclusion of Shreveport from equal opportunities for trading in Texas, thus in effect building a tariff wall about the State, is that Shreveport lies east instead of west of the line between Texas and Louisiana.

I submit that the Interstate Commerce Commission is hardly fair there. They do not truly portray the differential that is against Texas cities and maintained in favor of Shreveport on inbound business.

Regarding the usurpation of the power of the State commission in the Texas case, or the Shreveport case, I want to say that it is my individual view that there can be no harmony between the Interstate Commerce Commission and the various State commissions until this interstate discrimination is cured; and if the Interstate Commerce Commission is so committed to the policy built up over a period of

years that they can not give the relief and the security which the intermediate points need and desire, and if, because, not having secured the relief that they should get through the medium of the Interstate Commerce Commission, a State commission undertakes to offset some of that discrimination by lowering the rate within the State between various commercial points within that State, as the Texas commission has done, and the Interstate Commerce Commission undertakes to do as it has done in the Shreveport case, to offset that kind of discrimination, I want to say right here that we are going to fight—that is, speaking for myself—I say there can be no peace or harmony between the Interstate Commerce Commission and the various States on that kind of a proposition.

However, if, on the other hand, Congress can by a declaration remove this interstate discrimination and lay down a policy upon which all sections of the country may go out and develop in proportion as their resources and their energy will justify upon an equal footing, in so far as transportation charges are concerned, then I am in favor of cooperating with the Interstate Commerce Commission in the working out of discriminations so that one State shall not through its State commission fix a tariff wall, such as referred to by the Interstate Commerce Commission in the Shreveport case—referred to erroneously, though, in my judgment—I shall be more than willing in that event to cooperate with the Interstate Commerce Commission in helping to work out interstate discrimination as between States which arises because of the regulation of purely intrastate rates by State commissions. Otherwise I want to say that, so far as I am concerned, I will fight right down the line; that we will not let the Interstate Commerce Commission assume any such jurisdiction as that, and I think we will be effective in preventing it, too. That is a plea that will appeal to every State commission: it is one we can all cooperate and work in harmony on. We may not all agree on the elimination of the circuitous rail long-and-short-haul rates, because there are some States where there is local discrimination of this kind authorized, but upon the principle which I am discussing we are all strongly together.

The CHAIRMAN. Let me ask you there, looking at the matter from the national standpoint of the best use of transportation facilities that are available, and economy of resources, what advantage is there, or whether or not there is any advantage to a transportation company in building up on its line, we will say, one great center of industry and depot of supplies so that it will have a hundred carloads of commodities to be distributed on a certain section of its line or in the country adjacent to it, it would be to the advantage of that company to take all of its hundred cars to this great center, to this depot where everything is collected, in preference to dropping off ten cars at A and ten cars at B and ten cars at C along its lines?

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. Is the first statement more advantageous to the company, as a transportation company, than the last statement is: would it give the company any advantage in the way of handling its business?

Mr. SHAUGHNESSY. Yes; it does this: They parcel up the territory into great industrial and manufacturing zones, it promotes double

hauling, it promotes transportation, as it were, which the railroad companies have to sell.

The CHAIRMAN. I think you are dealing with it on a somewhat different basis from the one I was asking you about. I was not asking you about the amount of money that the company would make, but was asking you about the actual transportation of the commodities.

Mr. SHAUGHNESSY. Which would be the easier?

The CHAIRMAN. Which would be the most advantageous for doing the business of the company of transporting the commodities that have to be transported?

Mr. SHAUGHNESSY. Of course, the safest and the wisest plan would be to have the business equably distributed throughout the territory served by the transportation company rather than to have it bunched at large terminals or industrial points.

The CHAIRMAN. How are you going to distribute it equably; who is going to decide what is equable?

Mr. SHAUGHNESSY. I say this: You of course can not prevent one community from advancing more rapidly than another, but you can fix a rule or a law, if you please, that will enable communities to develop in proportion as their resources and energies justify.

The CHAIRMAN. My purpose in asking the question was—it had been argued that it was necessary in this business to collect it at certain points; that if you got 100 carloads, whose ultimate destinations were to different points on the line—I can not see myself, it may be there is some transportation reason for it—how the company can handle it any better by taking it to the end of the line and distributing it from there, than if they would drop off the carloads along the line as they go. Imagine it all in one train; then all they have to do is to drop off 10 cars and go on with the 90 cars, and so on.

Mr. SHAUGHNESSY. Of course the only theory that might explain some of that would be this: That on a local line where the traffic is well distributed, and we have some of those throughout the United States, that results in a local business and means more short-haul business than some other lines who have the long-haul business. Of course the longer haul is very desirable and is handled very much more cheaply than the local short-haul business, which I was trying to illustrate to you in the cost of operation per ton example which I put in there some time back.

The CHAIRMAN. All right.

Mr. BARTINE. Let me suggest to you right on that point, Mr. Shaughnessy: It is true, of course, that the long-haul traffic can be carried more cheaply than the local traffic, but is it not the general rule throughout the country that the local business is carrying very much higher rates?

Mr. SHAUGHNESSY. Absolutely. I explained that, too.

Mr. BARTINE. Does not the creation of a large number of these intermediate points of distribution tend to the upbuilding of the country, and create an enormous amount of local business that otherwise would not exist?

Mr. SHAUGHNESSY. Yes, sir, and a very profitable business, too.

Mr. BARTINE. Is not this also true, that primarily these preferential rates to the coast were confined to the places where there was actual deep-water competition?

Mr. SHAUGHNESSY. Yes.

Mr. BARTINE. But the railroads discovered that the effect was to retard the progress of the great State of California to such an extent that the terminals did not have any back country to distribute in, and consequently they retained lower rates at 160 to 180 points within the State of Nevada, where there was no water transportation whatever?

Mr. SHAUGHNESSY. Not in Nevada, in California, you mean?

Mr. BARTINE. In California, I should say.

Mr. SHAUGHNESSY. Yes, sir.

Mr. BARTINE. You remember they had a vast number, 160 to 180 points, enjoying terminal rates where there was no more water transportation than there was at Spokane or Reno or Salt Lake City or Phoenix?

Mr. SHAUGHNESSY. I do not know just the reasons for establishing those rates.

Mr. BARTINE. Of course we do not any of us know.

The CHAIRMAN. Where were those points?

Mr. BARTINE. They were interior points.

The CHAIRMAN. What State?

Mr. BARTINE. California. We have asked Mr. Jones, who was the general traffic manager of the Southern Pacific Railroad Co., and Mr. Luce, both, how many interior points they had where there was no water transportation, and it runs from 160 to 180, and some years ago in Texas I understand the Interstate Commerce Commission, at the time these fourth-section hearings were held, they gave testimony, as I recall it, that the company found that by endeavoring to concentrate all the business at San Francisco they were leaving very little in the interior, wherein, by reason of the transplanting of the population they could distribute goods, and for that reason they found they had to make concessions to these interior points in the matter of rates in order to bring it up and develop the country.

Mr. SHAUGHNESSY. Before closing, Mr. Chairman, I would like to introduce an excerpt from the report of Mr. John H. Small, chairman of the Committee on Rivers and Harbors, in the appropriation bill issued in February, 1918, which covers the question of water transportation.

The CHAIRMAN. Very well.

Mr. SHAUGHNESSY. It reads as follows:

If there have been any skeptics in the past regarding the necessity for the facilities of water transportation, such doubts must have been removed by recent developments. The continued increase in production has not only equalled the facilities for transportation by rail, but during prosperous periods and under abnormal conditions the railroads of the country have demonstrated their inability to meet the demands of transportation. This condition has been acutely demonstrated during this war. In many respects the systems of railway transportation in the United States is superior to that of any other country, although in recent years they have apparently been unable to provide the necessary additions to their tracks, terminals, rolling stock, and other equipment. However, even with adequate betterments, it is probably true that they can not, under abnormal conditions, meet the demand for traffic movement.

We have in the United States a great number of fine harbors and thousands of miles of navigable waterways. Many of the harbors through local cooperation have provided piers and modern water terminals with transfer facilities to handle traffic. On a few rivers the same facilities have been provided and a large water commerce exists. On many navigable rivers, however, even

where channels have been provided suitable for navigation, there exists small commerce and only crude and inadequate facilities. On some of these interior rivers a substantial commerce which existed in former years has gradually decreased and water transportation lines have been abandoned. The time has certainly arrived for a study of the causes which have produced these rules. This committee has attempted to give the subject careful consideration and earnestly desires to promote a constructive policy.

It is obvious that a mere channel will not in itself promote water transportation. Some of the essentials may be summarized. Water transportation mines must be organized with ample capital, with steamers and barges of appropriate type, and operated under capable management as to traffic and other conditions.

There must be constructed at all cities and towns water terminals suitable to the demands of traffic and the commercial requirements. It is not appropriate in this report to refer to all the features which constitute an adequate water terminal, but it may be stated that such a terminal must have ample water front, substantial piers, sufficient warehouse, and facilities for transfer expeditiously and economically, and that such terminal shall be connected by a belt line with all the railroads serving the community.

There must also exist a complete system for the interchange of traffic between the water lines and the railroads with joint through rates, to the end that freight may be moved partly by water and partly by rail from the point of origin to destination.

As navigable waterways are within the jurisdiction of the United States and their improvement is a function of the Federal Government Congress may predicate appropriations for the maintenance and improvement of these waterways upon the condition that the essential facilities for efficient water transportation shall be provided by the localities. As the House of Representatives must initiate appropriations for such improvements, it is apparent that both an opportunity and a duty is presented. This committee would be gratified if it could initiate and maintain such a constructive program. The plan involves no discovery or peculiar knowledge of the subject. The value of these facilities in the proportion and maintenance of water transportation have been demonstrated on many rivers and harbors. The difficulty lies in their insistent application. Persistence and courage are necessary. In no event can such a policy be translated into law unless it is sustained by an enlightened public sentiment and receives the approval of Congress.

The report carries with it also a recommendation for appropriations in support of rivers and harbors to the extent of \$20,000,000 for the current year. In connection with the matter just read I wish to suggest that it shows the outlining of a new policy by the Government with regard to the building up and the encouraging of waterway transportation.

I wish to again suggest as strongly as I can that in order to give to that industry or new kind of transportation the encouragement and the safeguards which are absolutely essential to it, if money and capital is to be invested therein, the Congress must provide for the passage of an absolute long-and-short-haul law.

The CHAIRMAN. How does it happen that the great maritime State of Nevada is making such an awful fight for water transportation, and the harbors on the coasts are fighting against it?

Mr. SHAUGHNESSY. I do not know. That is quite an anomaly, to be sure.

Mr. WETTERICK. Does he suggest anywhere in that report that in order to revive the merchant marine he must have an absolute long-and-short-haul clause, or that railroad rates must be raised?

Mr. SHAUGHNESSY. No. But the waterways committee of the Council of National Defense does make such a recommendation.

Mr. WETTERICK. But you think the man who made that report overlooked such an essential element?

Mr. SHAUGHNESSY. I am not commenting on what he overlooked at all. Its important feature is the declaration of a new national policy regarding waterway transportation.

Mr. WETTRICK. He says nothing about that at all, does he?

Mr. SHAUGHNESSY. The report speaks for itself.

Mr. Chairman, I would like to have a ruling upon my request yesterday to have introduced and incorporated as part of this record a copy of Senator Poindexter's minority report on the compensation bill, which has just passed Congress.

The CHAIRMAN. All right.

(Without objection, the report referred to was ordered incorporated in the record, as follows:)

[Senate Report 246, part 3, Sixty-fifth Congress, second session.]

FEDERAL CONTROL OF TRANSPORTATION SYSTEMS DURING THE WAR.

Mr. POINDEXTER, from the Committee on Interstate Commerce, submitted the following minority views (to accompany S. 3752):

I can not agree to the report of the majority of the committee in two particulars:

First. I disagree to the provision of the committee bill providing a certain date at which the railroads will be turned back to their private owners, without making any provision whatever for removing the notorious abuses and inefficiencies of the present system of private competitive ownership and operation.

Second. I disagree to the provision of the bill divesting the Interstate Commerce Commission of its existing powers of rate regulation, and transferring the primary rate regulation authority to the President, and creating in the commission appellate or supervisory power to set aside or modify rates fixed by the President.

As to the first disagreement, I think the general consensus of well-informed and disinterested public opinion is that the present system by which the railroads are forbidden by law to coordinate or combine transportation facilities and resources and are compelled to operate as rival competitors for business under private ownership, with very limited governmental regulation, is a failure. Out of it have grown scandals and abuses which have been set forth in sworn testimony given before subcommittees or agents of the Interstate Commerce Commission and committees of Congress, and embodied in reports of these tribunals. It is a great mistake, in my judgment, for this committee to recommend, as it does in the majority report, that on a certain date the railroads should be restored to private owners without in any way changing the dangerous and unscientific conditions which existed up to the time the transportation systems were taken over by the President under authority given him by Congress.

Everyone who has studied the question knows the practical difficulties in securing affirmative legislation affecting so great an interest as that of the railroads of this country, even when the legislation is needed to remove abuses which are perfectly obvious. To illustrate this, the Senate is familiar with the futile efforts which have been made in recent years to secure some reasonable governmental supervision and regulation of the stock and bond issues of these public-service corporations. The rate burdens which have been imposed upon the people on account of the inflation of railroad capitalization—vast issues of "watered" stock and the distribution of this stock in many instances as bonuses or rewards to promoters and bond buyers—have been equal almost to the direct taxes levied upon the people for the support of the Government. A bill to remedy this great evil passed the House of Representatives and got so far as to be favorably reported by the Interstate Commerce Committee of the Senate, and yet, although it has been pressed for several years since that time in succeeding Congresses, it has not been possible to get favorable action or even consideration of this essential measure. With that and similar experiences in mind, it is impossible to say when positive legislation may be enacted putting the transportation business of the country upon such a basis as that the railroads can be operated as one public system, with the public interest as the

primary consideration, and with such governmental control or outright governmental ownership—if that should prove to be necessary as a last resort—as would insure the foregoing results. Until these problems are worked out and enacted into law there should not be a certain date fixed for the return of the railroads to private ownership and control and practically unrestricted private competitive operation.

Under the system existing before the roads were taken over by the President the fundamental rule of rate making was not at all that which is contemplated by the interstate-commerce act, namely, a reasonable rate for the service rendered, but, according to the sworn testimony of railroad official rate makers, it was "what the traffic would bear." In other words, the governing principle was to take in rates all that could be taken without crippling or destroying the industry which produced the commodities of transportation. In practical application, of course, in view of variations of cost of production and of local conditions, the principle was not always worked out in practice.

Under the old system, which is to be restored by this bill 18 months after the close of the war, the railroads, being operated with the view of making the greatest returns possible to the private owners of each particular road or system, and without any actual regard whatever to the larger public economies and public interests, instead of so arranging routes and shipments as to require the least transportation and to get commodities to their destination by the shortest and most direct line, in general the opposite policy has prevailed, namely, to carry them by the longest possible route with a consequent waste of public resources but of private gain to railroad operators. The long haul has been favored over the short haul under the guise of meeting water transportation. Water transportation has been destroyed. Public interest would require the fostering and development to meet the growing transportation needs of a growing country of every natural water route. Through a system of so-called terminal rates, often put lower than a reasonable amount for the service rendered, and through difficulties placed by the railroads in the way of transfer and connection with the water routes, this great national resource has perished as though struck by a deadly blight.

To compensate the railroads for any reduction in rates, which it may have been necessary for them to temporarily make in order to destroy competing lines of water transportation, discriminatory higher rates have been charged to intermediate points and for the shorter haul, a much greater charge for a much less service—contrary to every fundamental principle of just compensation for service rendered. In this way the greater part of the country has been retarded in its development and subjected to an unjust tribute by the railroads. The consequence has been not only the paralysis of shipping and of the great industry of water transportation and the deprival of the people of the benefits of these great arteries of trade which they would have enjoyed if instead of being discriminated against they had been, in the public interest, nurtured and encouraged, but crowding and congestion in certain terminals has been the inevitable result, so that when the country was recently confronted by a great crisis its entire transportation system was paralyzed.

I do not think that public opinion will tolerate a return to these conditions. It is obviously unscientific, from a public standpoint—and this question should be from every point treated with the public interest as a primary one—for several parallel competing lines between great producing centers to so struggle among themselves as rivals for business that while one, through superior terminal facilities or advantages of location, secures more business than it can adequately handle, another, not so advantageously situated but equally capable of transportation of commodities, may not be utilized to more than one-third of its capacity. The interests of the public require that these lines should be regarded as a part of the transportation system of the country, and that business should be so distributed between them as to afford, on the whole, the cheapest and best service to the public. At the same time it is not possible—from a political standpoint, at least—to allow a consolidation of the railroads of the country under private ownership and control, not even with the inadequate and limited regulation heretofore interposed by the Federal and State Governments.

Such a colossal power concentrated in private hands would lead to abuses that, if not remedied in any other way, probably would produce political revolution. It would be a most dangerous experiment, and outside of a few interested circles probably would not receive serious consideration. Yet it

is equally agreed that the competitive system is a demonstrated failure. The only alternative is a more adequate and extensive Government control or operation in the interest of the people, with due regard at all times for vested private interests which the laws have allowed to be built up in these public-service agencies. Until this is done it is the height of un wisdom, in my judgment, to provide, as the committee bill proposes, to restore these properties at a certain date to the old conditions.

Under private control and operation, with one system competing against another for business, those systems which have been able to secure powerful backing in the great financial centers have been able to restrict and curtail the development of other systems in other sections of the country whose principal potential business was in the transportation of similar commodities. In this way certain coal fields have been favored and promoted, while others which should have served great sections of the country have been held back from development by high or discriminatory rates. The consequence has been not only the loss of this business to adjacent railroad lines, but the killing of industry and development in the section which those lines should have served; and in the illustration mentioned, that of coal, it has been one great contributing cause of the scandalous coal famine this winter. I say "scandalous," because the death of many of our people, the suffering of more, the checking of our industries at a time when they are most needed, the weakening of our efforts in the vital crisis of a war, due to inadequacy of fuel supply, in a country with such natural resources of coal and such transportation facilities as our own is scandalous.

Under the system, which it is proposed by the committee bill to restore 18 months after the close of the war, some railroads earned as high as 50 per cent upon their capitalization, inflated as it is, while other roads, which were equally necessary to the communities which they served, earned no profits at all; and yet our system of rate making has, so far, worked out no principle by which this inequality could be adjusted. Under Government operation, with profits and losses of all the railroads going ultimately into one account, such inequalities would adjust themselves. Under private ownership it is obvious that this inequality of returns is inequitable and unjust. It may be possible to find some plan of rate making by which, even under private operation but with a larger measure of governmental control and supervision, these discrepancies could be adjusted so that those engaged in the public business of transportation on the highways of the Nation, with efficient management, would receive more equitable relative returns. This inequality of return inevitably, of course, affects the quality of the service rendered, and as a result deprives certain sections of the country of public facilities with which they should be provided. Until a basic policy is worked out, which would have the effect of cutting down excessive returns on certain lines and permitting adequate returns upon others, the day for the return of the roads to their private owners ought not to be fixed.

This bill makes no provision for the prevention in the future of such wholesale looting of public transportation systems as were perpetrated in the cases of the Chicago & Alton, the Rock Island, the New York, New Haven & Hartford, the Pere Marquette, the Frisco, the Cincinnati, Hamilton & Dayton, and others, as disclosed by testimony on record as mentioned above. Probably no greater financial crimes or ruthless destruction of private property under the apparent permit of the law were ever perpetrated than in these and similar instances, possible under the old opportunities for stock jobbing and stock control by interested private operators, which this bill would restore. Families have been ruined by the thousand, untold misery and many deaths, with far-reaching consequences, both direct and indirect, of business depression and the suffering of whole communities have been produced by these unscrupulous enterprises. In my judgment, it would be a breach of legislative trust to provide for the restoration of these properties to the conditions without legislation which would make such crimes of private railroad finance impossible.

Perhaps \$300,000,000 a year could be saved to the people of the country by doing away with the multiplication of officials and the cutting down of over-large salaries if the roads were consolidated and operated as one transportation system. The maintenance of multiplied complete official organizations on numbers of competing lines serving the same area imposes a wholly unnecessary economic burden upon the people. No attempt even has been made to provide for the elimination of this waste. The Post Office Department gives a very good example of excellent and efficient public service which can be obtained from men

of ability and integrity for salaries far less than those paid by private transportation companies for services of the same grade and quality under private management. It is difficult to estimate the saving which would accrue in this direct way by cutting out the useless extravagance of salary, multiplication of officials, the superfluous elegance of equipment and material used in catering to the luxurious tastes of a portion of the traveling public by rival competitors for their business, but which adds nothing whatever either to the comfort or efficiency of the service. All of this could be effected under a system of permanent governmental control. Until these questions are studied and worked out on a permanent basis, no law should be passed fixing positively a date for the return to private operation.

The revenue received by the railroads, and which is provided in this bill as a measure of their compensation temporarily pending the war and until the date for the return of the roads fixed by the bill, is, as to many of the roads, entirely too high, while as to some of them, perhaps, it would not be adequate. In another form this has been mentioned above. It is extremely doubtful whether this condition could be readjusted in the midst of the present war, with the financial and transportation crisis with which the country is confronted, with necessity of maintaining the credit of existing securities; and for that very reason no definite time should be fixed for the reestablishment of the system under which these revenues were permitted. On the contrary, an entire readjustment of the whole basis and fabric of the control and operation of the transportation of the country, including rates and revenues, should be established, and no date at all for a return of the old unjust and intolerable system should be fixed. It is impossible, perhaps, in the midst of the crisis of the war to adequately deal with many of the problems mentioned above, and for that very reason no time limit should be fixed for the return of the roads to their private owners. The status quo should be preserved, whether for 18 months after the close of the war or longer, until these problems have been solved and enacted into fundamental law.

As to the second point of disagreement, it is necessary to say only a few words. The bill of the committee vests the primary governmental making of rates in the President, and undertakes to give to a commission, composed of members appointed by the President, supervisory control over the President in this matter of rate making. Of course, the arrangement is illogical and unworkable. It is a little too much to expect of human nature that officials who owe their official existence to the President will be able, however much they may try, to exercise any real independent judgment or action in setting aside the President's orders in the matter of rates. The fact of the case is that the established rate-making bodies—the Interstate Commerce Commission and the State commissions—should be left just as they are at present, empowered to make orders respecting rates, which orders should have the same force and effect as at present, with the proviso that where the President, acting through the director general, may deem it necessary, in the exercise of the war powers under which he has taken control of the roads, to modify or change a rate, he may do so. In this way the director general and the President will be relieved of the overwhelming duty of fixing all rates which will devolve upon them under the bill as reported by the majority of the committee, and for which neither the President nor the director general have any adequate facilities or equipment or training or experience whatever. On the other hand, the President and the director general would have the necessary knowledge and equipment and official facilities to enable them in certain special obvious cases, where it may be necessary for them to act in the execution of their duties relative to transportation devolving upon them as a war power under existing legislation, to modify or change a particular rate. This is all that would be needed for the full exercise of the war power referred to, and my understanding is that it is all that is desired. To impose upon the President and the director general the complicated and laborious business of initiating all rates is unnecessary and involves such a vast amount of labor that it could not be properly exercised. To provide that a commission appointed by the President may set aside the rates made by the President is wholly illogical and will be unworkable in practical application.

Mr. SHAUGHNESSY. Now, Mr. Campbell wishes to make a brief statement. That concludes my statement.

Mr. Wood. I should like to ask Mr. Shaughnessy a question or two. Mr. Shaughnessy, I did not quite get the significance of your

reference to the Shreveport case. Do I understand you contend that that is the outgrowth of violations of the long-and-short haul clause?

Mr. SHAUGHNESSY. Yes. The principle is the same as such a violation. The transportation conditions are identical, so far as the rail lines are concerned, and in the absence of water competition, it is a question of parallel discrimination, rather than the kind of long-and-short haul discrimination condemned by the act, that it must be included within and over the same line and in the same direction.

Mr. WOOD. In other words, that case arises under section 3, not under section 4.

Mr. SHAUGHNESSY. Yes, sir; but the low inbound rates from northern centers to Shreveport are because of fourth-section violations.

Mr. WOOD. Then you think that that case indicates that the commission is not on the right track in the administration of section 3; is that it?

Mr. SHAUGHNESSY. I think if the fourth-section violations are prevented, in the Shreveport case, that the Interstate Commerce Commission will not undertake to make rates lower from Kansas City to Shreveport, as they now do, than from Kansas City to Dallas, Tex., a shorter distance point by other lines operating under identically similar circumstances and conditions with the line which runs from Kansas City to Shreveport. I contend that the passage of an absolute long-and-short haul rule will cure a situation of this kind, because there will then be no reasonable excuse for the commission authorizing the Kansas City Southern Railroad to maintain a lower schedule of rates than the Missouri, Kansas & Texas or the Frisco railroads for equivalent distances south bound from Kansas City.

Mr. WOOD. But that was not a discrimination under section 4?

Mr. SHAUGHNESSY. No; it was not. You are correct on that.

Mr. WOOD. If I followed you, your purpose in offering these statements showing earnings per ton and estimated cost per ton, etc., was to indicate that the application of the terminal rates at Reno would result in rates which were reasonable in themselves, and would not be unreasonably low as applied at that point. Is that the purpose?

Mr. SHAUGHNESSY. Yes, sir; not only Reno, but all other points in the back-haul intermountain territory.

Mr. WOOD. The Interstate Commerce Commission has always recognized, and has always said in these cases, has it not, that irrespective of any water competition at the terminals, you are entitled to a reasonable rate at Reno?

Mr. SHAUGHNESSY. Yes.

Mr. WOOD. And should not be charged a rate that was unreasonably high. They have always said that, have they not?

Mr. SHAUGHNESSY. Yes, sir; that has been their statement.

Mr. WOOD. And you have presented this testimony to them in the past, have you not?

Mr. SHAUGHNESSY. I have: yes, sir.

Mr. WOOD. Well, if the railroad companies should permanently retire from the coast traffic, and rates should be advanced, as they have been, that would not result in giving you the rates which you think you ought to have, on the basis of that testimony, would it?

Mr. SHAUGHNESSY. Oh, yes; it would, Mr. Wood, because it would have the effect of building up the great interior.

Mr. Wood. No; but on the question of reasonable rates your rates will remain as they are to-day, will they not?

Mr. SHAUGHNESSY. On what ground?

Mr. Wood. To-day the rates to the terminal points have been advanced.

Mr. SHAUGHNESSY. Yes, sir.

Mr. Wood. Your rates have remained where they were.

Mr. SHAUGHNESSY. Where they were; yes.

Mr. Wood. Do you think that by advances in the terminal rates your rates at the intermediate points have become reasonable?

Mr. SHAUGHNESSY. No.

Mr. Wood. Well, then, in order to get what you think you ought to have, you will have to have a different administration by the commission of the first section as well as the fourth section, will you not?

Mr. SHAUGHNESSY. Yes, sir; I said that in my direct testimony, I think.

Mr. Wood. What modification do you think should be made in the first section in order to insure to you an administration of the first section by the commission which will give you what you think you ought to have?

Mr. SHAUGHNESSY. Why, I think the section perhaps is sufficient. The only thing in order to cure the situation is to pass an absolute rule by amending the fourth section whereby the commission will be relieved of the present interminable trouble of the railroad applications for exemptions from the provisions of the fourth section, and then allow the commission to proceed normally as any other commission does, as the State commissions do, for example, to work out a system of just, reasonable, and nondiscriminatory rates.

Mr. Wood. But that will not affect their administration of the first section, will it?

Mr. SHAUGHNESSY. You mean on the reasonableness of the rates?

Mr. Wood. Yes.

Mr. SHAUGHNESSY. Why, yes, it will; certainly. At the present time the commission has been confused and prevented, in my judgment, from going into a careful analysis of the reasonableness of the rates, at either the short-haul or long-haul points, for the very reason that the rates—at the Pacific-coast terminals, for example—have constantly fluctuated upward and downward from time to time. Under the plea of meeting water competition and under the policy adopted, how could the commission work out a system of reasonable and permanently stable rates? Necessarily, because of these varying rates at the Pacific-coast terminals, the commission has fallen into a frame of mind by which they have been fixing a relationship of rates at the intermediate and farther distant points and have not determined their reasonableness.

Mr. Wood. What effect did that have upon the consideration of your reasonable rate at Reno?

Mr. SHAUGHNESSY. The reasonable rate at Reno?

Mr. Wood. Yes. You are now criticizing the conclusion that they have reached as to the reasonableness of your rate at Reno because

you think they have not applied the proper test. What amendment would you suggest to section 2?

Mr. SHAUGHNESSY. I do not believe any amendment is necessary. On the contrary, we must trust its administration to the discretion of the Interstate Commerce Commission.

Mr. WOOD. Is not that true also of section 3, with respect to section 3?

Mr. SHAUGHNESSY. I do not wish to express an opinion on this section at this time. A special committee of the National Association of Railroad Commissioners, made up of members of both the State railroad commissions and the Interstate Commerce Commission, is engaged at the present time in devising ways and means for the elimination of conflicts between the national and the various State commissions. It is hoped to accomplish this result by having the Interstate Commerce Commission and representatives of State commissions sit together when a complaint of undue preference and discrimination is raised as between States on interstate traffic, in order that it may be amicably removed or adjusted upon the basis of a single record and without conflict as to either State or national jurisdiction. We are hopeful that this result may be accomplished. But in the meantime it should be clearly understood that the various States will not submit to action by the Interstate Commerce Commission which has the affect—as in the Shreveport and Illinois rate cases—of completely usurping the power of the State legislatures, courts, and commissions, and centralizing in the hands of the Interstate Commerce Commission complete authority over the regulation of State commerce and its instrumentalities. Transportation is an important function of government—State as well as National—and the various States are not going to surrender their sovereignty in this respect.

Mr. WOOD. You do not think you ought to trust the commission to determine whether the conditions at a more distant point are such that undue discrimination would result at an interior point?

Mr. SHAUGHNESSY. No; that is violative, in my judgment, of wise national policy, Mr. Wood. I also want to strongly recommend that an amendment be made providing that when complaint is filed and investigation is under way by the commission, it shall be the duty—and I want to emphasize that word “shall”—of the commission to construe sections 1, 2, and 3 together in determining the just and proper relief that should be accorded to producers, shippers, communities, and States, because they are without relief in the matter of appeal to the courts from the decisions of the commission, whereas the carriers have such right. Further, for these reasons, I am strongly of the opinion that Congress should vitalize and strengthen the act to regulate commerce in every proper way, and that we may thereby have an end to the piecemeal regulation that we have had in the past under sections 1, 2, 3, and 4.

Mr. WOOD. I think that is all I have to ask.

Mr. SHAUGHNESSY. The commission itself says that it has power only to fix a maximum rate and can not make a specific rate, and while it can only make alternative orders in the removal of discrimination, within which the carriers may juggle the rates around in any manner they see fit. Now, this is not reasonable, and, least of all, effective public regulation. Compared with the effective regulation

of intrastate commerce by the State legislatures and commissions, it is a joke. Is it any wonder that the carriers would like to have all power of regulation centralized in the hands of the Interstate Commerce Commission, to the exclusion of the various State legislatures and commissions and courts, where the powers are so broad and comprehensive that only the delegated inhibitions of the Federal Constitution intervene, and where regulation is effectively, fearlessly, and fairly exercised in behalf of the public and its utilities? We of the States are not going to barter this sovereign power away. On the contrary, we shall continue to cherish and guard it carefully—the convenience or the alleged prosperity of the carriers and other industrial interests to the contrary notwithstanding.

Let me also say, lest there be misunderstanding, that what I have said here arises out of questions of public policy and conflicts between State and National jurisdictions, and because of inadequate and ineffective railway regulation by the Interstate Commerce Commission. Now, while my analysis has of necessity been critical, I do not wish to be unfair or uncharitable to the members of the commission. They are able specialists in the field of railway regulation, and because of many conflicting circumstances, insufficiency of statutory power conferred by the act to regulate commerce, the act as construed by the courts, and the constant pressure of the railroads contesting their orders in the courts, they have probably done as well as might be expected under such restrictions. In this connection the States, in the defense of their sovereignty and on behalf of the producers and consumers, as distinguished from the railroads and the large industrial and commercial interests who are here in support of maintaining the present system of regulation, are not without responsibility for their failure to have appealed to Congress long ago for such amendments and regulatory acts as would have made regulation of interstate commerce by the Federal commission equally as comprehensive, effective, and definite as that which has for many years been enforced by the various State legislatures, commissions, and courts as to their internal commerce. And while, as a result of our experience during Government operation of the railways, many needed changes in the law of regulation will be proposed and enacted, I do not wish to see the Interstate Commerce Commission disintegrate and pass out of existence. On the contrary, while preserving the sovereign right of the various States to regulate their own internal commerce, I want to see Congress empower the Interstate Commerce Commission in every proper and lawful way, so that its regulations in the future will be comprehensive, effective, and certain, instead of restricted and largely optional, as they have been in the past.

Mr. CAMPBELL. Now, I want, in view of Senator Pomerene's request, that we express ourselves on the kind of a bill that we favor—I want to go on record in favor of Senate bill 313, with this exception: I would suggest that from lines 5 to 10, inclusive, on page 10, be stricken out—that is the proviso which provides that a carrier having once reduced its rates to meet water competition can not raise them again.

The reason I suggest that that be stricken out is for this reason, that now, under the amendment of the fifteenth section, increases in rates can not be allowed without making application to the commission, and there is no longer any necessity for that sort of a clause.

It is covered by the fifteenth section, and the commission will have to hear and pass upon all increases, so I think there is no necessity for that clause. Therefore, I would propose that the law as it now stands be reenacted, cutting out the proviso, leaving it to the commission, in other words exactly as it is published on page 1, down to line 13, and exactly as printed in lines 1, 2, 3, and 4 on page 2, cutting out lines 5 to 10, inclusive, and then including lines 11 to 12. Mr. Wettrick, pardon me.

Mr. WETTRICK. I was simply going to suggest that the amendment to the fifteenth section expires by limitation in 1920, does it not?

Mr. CAMPBELL. Yes; that is true; and it is barely possible that that might be extended, but I don't think that we want it put into the fourth section.

Mr. WETTRICK. That is to say, after that time it will not be necessary to make application and secure permission?

Mr. CAMPBELL. No; I imagine, however, before that expires there will be some other legislation or extension of that.

I had not quite finished. I was going to say that I would like to recommend that when a bill is reported out of this committee that it be an absolute prohibition without any exception. Whether that should be Senate bill 313 or some other bill, why, of course. I don't care; but I would like to have, when it is reported out—my recommendation is that when it is reported out it be an absolute prohibition without any exceptions, and I think the bill as outlined by me, with those lines stricken out of it, would be such a bill.

Mr. SHAUGHNESSY. In that connection, Senator, I would like to recommend that that portion of the present fourth section which reads, in line 12, "or to charge any greater compensation as a through route than the aggregate of the intermediate rates, subject to the provisions of this act," be eliminated. That portion should, in my judgment, be taken out of there. I ask that it be eliminated. For the reason that it does not follow that the combination of local rates makes the just and reasonable through interstate rate. It does in many cases, but in many cases it does not, and in any event it is purely arbitrary as a measure for the fixing of a rate, and the vice of it, as we see it, speaking now on behalf of the State railroad commissions, is that it gives to the Interstate Commerce Commission jurisdiction over our local rates, which are combined and made a part of these interstate rates by the law. For that reason we would like to have the rates segregated.

Now, we are willing, as I stated before, to cooperate with the Interstate Commerce Commission in the working out of just and reasonable rates, on any basis or combination, but we are not willing to suffer under the discrimination and the unjust treatment that we have received thus far. Aside from that, why, I concur in Mr. Campbell's recommendation that when this committee does report out a bill, that it be confined wholly to an absolute long-and-short-haul provision, and that all surplusage as to meeting water carrier rates, and things of that kind, be entirely eliminated from the bill.

Mr. CAMPBELL. Could I file the bill I have marked as part of my remarks?

The CHAIRMAN. Yes.

(The bill, S. 313, as amended is here printed in full, as follows:)

[S. 313, Sixty-fifth Congress, first session.]

A BILL To amend section four of the act to regulate commerce passed February fourth, eighteen hundred and eighty-seven, and subsequent amendments thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of the act of Congress of February fourth, eighteen hundred and eighty-seven, to regulate commerce, and as subsequently amended, be, and the same is hereby, further amended so as to read as follows: "It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act, but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance.

This act shall take effect sixty days after its approval by the President.

MR. SHAUGHNESSY. Mr. Chairman, I wish to enter the appearance, in addition to those I have already entered as of record, on behalf of the Intermediate Rate Association, the Chamber of Commerce of Hastings, Nebr., the Helena Retail Merchants' Exchange, Helena, Mont., and the Helena Retail Merchants' Association, of Helena, Mont. Likewise, the appearance of the Helena Commercial Club of Helena, Mont. Also that of the Bozeman Chamber of Commerce, of Bozeman, Mont.

THE CHAIRMAN. You say, enter the appearances. Are they opposed to the passage of this bill?

MR. SHAUGHNESSY. Well, I will read them into the record.

HELENA, MONT., March 18, 1918.

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

May we ask that you kindly represent us in passage of bill 313. If so, this will be your authority. We are wiring our Congressmen, asking that they give this bill their support.

HELENA RETAIL MERCHANTS' EXCHANGE,
By A. L. REEVES, *President.*

HELENA, MONT., March 18, 1918.

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

This association is vitally interested in passage of Senate bill 313, and requests that you please represent us in this matter. We are wiring our Congressmen for their active support.

RETAIL MERCHANTS' ASSOCIATION OF MONTANA,
By EXECUTIVE COMMITTEE, R. L. VARNEY, *Secretary.*

HELENA, MONT., March 18, 1918.

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

This will be your authority to represent the Helena Commercial Club at all hearings on Senate bill 313. Confirmation by letter follows.

HELENA COMMERCIAL CLUB,
By H. G. PICKET, *President.*
L. M. REAM, *Secretary.*

BOZEMAN, MONT., *March 14, 1918.*

J. F. SHAUGHNESSY,
President Intermediate Rate Association,
Washington, D. C.:

Will be pleased to have you represent us in passage of Senate bill 313, and this will be your authority. Wiring Senators and Congressmen.

BOZEMAN CHAMBER OF COMMERCE,
H. H. HOWARD, *President.*
J. H. HARACEB, *Secretary.*

Mr. SHAUGHNESSY. Mr. Chairman, I ask to have introduced and made part of the record at this point copy of letter from the Monterey Chamber of Commerce, a deep-water port on the Pacific Ocean, in California, which reads as follows:

MONTEREY'S DEEP-WATER HARBOR—THE OPEN DOOR TO CALIFORNIA.

MONTEREY CHAMBER OF COMMERCE,
Monterey, Cal., March 20, 1918.

INTERMEDIATE RATE ASSOCIATION,
Washington, D. C.

GENTLEMEN: At a meeting of this chamber held last evening House bill 9928, submitted by your body, was, after full discussion, indorsed and the secretary instructed to notify our Member of Congress of the action taken
Yours, truly,

W. R. MCINTOSH.

The next is from the Mississippi Railroad Commission.

JACKSON, MISS., *March 12, 1918.*

INTERMEDIATE RATE ASSOCIATION,
Washington, D. C.

The Mississippi Railroad Commission begs to acknowledge receipt of your telegram, advising of hearings on long-and-short-haul bills before Senate and House committees on March 13 and March 25, respectively. I am very sorry to advise that it will be impossible for the Mississippi Railroad Commission to have any representative present, for the reason that our rate expert, who has charge of such matters, is seriously ill with pneumonia. However, you are authorized to use the name of the Mississippi Railroad Commission as party of record. The enforcement of the fourth section provision in this State will practically put out of business all of the little inland jobbing points. The Mississippi jobbing points are competitive with Mobile, New Orleans, and Memphis, and are given a preferential rate because of so-called water competition. The city of Memphis, some months ago, filed a petition with the Interstate Commerce Commission, alleging a discrimination between Memphis and other points in Mississippi, as between points within Mississippi. The railroads feel practically sure that the result of this litigation would be that any conflict in rates would be removed, or disposed of by an order of the Interstate Commerce Commission, requiring the carriers to remove the discrimination by an increase of rates between points in Mississippi.

In view of the fact that inbound rates—those are the rates from Chicago and all eastern defined territory—in view of the fact that inbound rates are not considered, it is very apparent that the effect of such a decision will be to absolutely put all of these little jobbing centers out of business. The Mississippi Railroad Commission is very much interested in the long-and-short-haul legislation, and we certainly hope that you will be successful in having the bill enacted into law. The Mississippi Railroad Commission will take this matter up with the Senators and Congressmen from this State and urge their support in the measure.

Very truly, yours,

JAMES GALCERAN,
Secretary Mississippi Railroad Commission.

The Mississippi situation, so far as rates are concerned, is analogous to the Shreveport-Texas situation, and they see in the coming a

decision by the Interstate Commerce Commission, the wiping out of the rates that the railroad commission has maintained within the State of Mississippi, in order to offset the discriminatory long-and-short-haul rates from Chicago and all eastern-defined territory, to New Orleans, Mobile, Memphis, and all of the so-called water competitive terminals that they have in the south.

The CHAIRMAN. Let me ask, Mr. Shaughnessy, are these papers you have of a similar nature to those you have read, advocating the passage of the bill?

Mr. SHAUGHNESSY. Yes.

The CHAIRMAN. I think, in view of the fact that there are no other members of the committee present to hear the reading, that it would be just as well to put them in the record.

Mr. SHAUGHNESSY. These are all favorable to the position taken by the Intermediate Rate Association, in behalf of the passage of Senate Bill 313, and other bills that have been introduced in Congress on this long-and-short-haul question. I will merely, then, state, Mr. Chairman, that the Railroad Commission of Texas also authorizes the Intermediate Rate Association to enter them as party of record and advise that they will be present for the hearings before the House committee and that they are unable to appear at this time.

Also the Chamber of Commerce and Manufacturers' Association of Dallas, under date of March 14, authorizes the Intermediate Rate Association to enter their organization as party of record.

This is, Mr. Chairman, somewhat different. It is a letter of confirmation from Secretary E. P. Byars, of the Fort Worth Traffic Bureau, confirming their telegram, authorizing the Intermediate Rate Association to enter their organization as party of record.

The CHAIRMAN. I will allow you to print all of those letters and telegrams.

Mr. SHAUGHNESSY. I will submit this letter and ask that it be incorporated in the record.

(The letter referred to is here printed in full, as follows:)

FORT WORTH FREIGHT BUREAU,
Fort Worth, Tex., March 13, 1918.

Mr. J. F. SHAUGHNESSY,
President the Intermediate Rate Association,
Washington, D. C.

DEAR SIR: We have to-day wired you as follows:

"Your communications to chamber of commerce referred this organization. Your testimony not received. Enter us as party of record."

Your letter of March 7 addressed to the Fort Worth Chamber of Commerce, also your telegram of March 11, have just been received.

In Austin yesterday your letter regarding the same subject, addressed to Chairman Mayfield, of the railroad commission, was handed me and discussed. We are not familiar with the exact status of the Intermountain Rate Case at the present time and we are not clear as to what you are seeking to do in connection with that matter.

We are more familiar with the question of securing action by Congress to remove the power of the Interstate Commerce Commission to summarily abolish or otherwise interfere with State-made rates which are in themselves just and reasonable rates. The writer testified before the Newlands committee and filed brief with that committee when the Sheppard amendment was under consideration many months ago, the proceedings of which were printed in pamphlet entitled "Regulation of Intrastate Rates, Hearing before the Committee on Interstate Commerce, United States Senate, on S. 5242, June 30, 1916." In

this connection the Texas Industrial Traffic League adopted resolutions favoring the passage of such a bill yesterday.

We would appreciate your kindness in advising us more fully in the premises.

Yours, very truly,

ED. P. BYARS.

Mr. Chairman, in connection with the discrimination in the southeastern section of the country, I want to submit one example, which is rather illustrative of the discrimination in that territory. We confined our discussion here largely to the discussion of discrimination in the intermountain territory, but I want to emphasize and exemplify that the discrimination throughout the Southeastern States, south of the Potomac and Ohio, and east of the Mississippi River, is just as severe as it is in the western territory, to which we have directed so much of our testimony. I refer to an exhibit of rates set forth in the Southeastern cases (30 I. C. C., p. 263), wherein it is shown that the first-class rate from New York to Memphis, a distance of 1,160 miles, is \$1 per hundred, or \$20 per ton, whereas to Grand Junction, Tenn., an intermediate point, the distance from New York being 1,107 miles, the rate is \$1.41, or \$28.20 per ton. The difference in the mileage is 52, whereas the difference in the rate is 41 cents a hundred, or \$8.20 a ton, which is the differential maintained against the shorter haul at Grand Junction, Tenn.

Now, then, in justifying this discrimination, the Interstate Commerce Commission said, justifying the discrimination between New York and Memphis:

There is a disconnected service between New York and Memphis, regular boats plying between Natchez and New York and Memphis. The water competition is to be regarded as potential, but not actual, and the testimony in this case indicates that any material advance in the rates from New York to Memphis would, without doubt, result in reestablishment of active competition on the Mississippi River.

In connection with the Byars letter than I submitted just here. I wish to give reference to the testimony which Mr. Byars gave before the Senate Committee on Interstate Commerce, on June 30, 1916, on Senate bill 5242, and I ask to have it incorporated with Mr. Byars's letter, his testimony beginning at page 44 and ending on page 54.

Mr. WETTRICK. Mr. Shaughnessy, do you remember that Commissioner Clark said in the Shreveport case there was no long-and-short-haul question involved?

Mr. SHAUGHNESSY. Mr. Clark and I do not exactly agree on that. Of course, when we come right down to a literal interpretation of the Shreveport-Texas discrimination it classes as third section discrimination. In other words, undue preference between communities—between the community of Louisiana, on the one hand and Texas on the other; but the point I make is, that the Shreveport discrimination on inbound business from the north is due to fourth section violations predicated upon the potential competition of the Red River and its proximity to the Mississippi River through the port of Vicksburg. This gave Shreveport lower rates on its inbound business from St. Louis and Kansas City than was given to Fort Worth, Dallas, and other mileage equivalent points in Texas, and this discrimination the Interstate Commerce Commission has failed to remove. And in this connection let me also state that Shreveport itself suffers long-and-short haul discrimination, as intermediate on the direct lines from

St. Louis and Kansas City to New Orleans, where there has been no water competition worth speaking of for years. As to the Shreveport and the Texas situation, therefore, we have parallel lines of railroad running direct from St. Louis and Kansas City to both Shreveport and Dallas. These lines operate under substantially similar circumstances and conditions and from an operating standpoint there is absolutely no reason why there should be any difference in the rates. Yet for a distance of 562 miles from Kansas City to Shreveport the rate on agricultural implements is \$10 per ton for a 562-mile haul whereas the rate on the same commodity from Kansas City to Dallas over a 515-mile haul, is \$13.80. Take canned goods as another example; the rate from Kansas City to Shreveport is \$6.60 per ton for the longer distance than to Dallas, where it is \$9.20 per ton. Now, that shows that the long-and-short-haul discrimination did enter into the Texas-Shreveport case, and because the Texas Railroad Commission undertook to offset this inbound discrimination maintained against Texas by lowering the local rates within the State of Texas, the Interstate Commerce Commission stepped in under the third section of the act to regulate commerce and found that the action of the Texas commission operated as a burden upon interstate commerce, and incidentally in removing this so-called discrimination as between localities, the commission has assumed jurisdiction over all local rates in Texas to the exclusion of the State legislature, its courts, and its railroad commission—and this in the face of the commission's own admission that it has no power to make anything other than a maximum rate and alternative orders for the removal of discrimination, under which the carriers may make any kind of a rate adjustment that they see fit. Now, as reinforcing and more fully elucidating the Texas situation I want to offer at this point the testimony of Mr. Byars, of the Fort Worth Traffic Bureau, and the testimony of Commissioner Mayfield, of the Texas Railroad Commission.

(The testimony referred to is here printed in full, as follows:)

STATEMENT OF MR. ED BYARS, REPRESENTING THE FORT WORTH BUREAU, FORT WORTH, TEX.

MR. BYARS. Mr. Chairman, I see that the Hon. Earl B. Mayfield, of our State railroad commission, is here, and as I am very anxious that he should be heard by the committee I will make my statement as brief as possible.

In discussing this bill it will not be necessary for me to review in detail all the incidents in the Shreveport case leading up to the present time. Suffice it to say that the Interstate Commerce Commission set aside the Texas commission's rates when it ordered in a scale of class rates from Dallas to points in east Texas on the Texas & Pacific and from Houston to points in Texas northeast thereof on the H., E. & W. T. However, the scale there fixed as far as it went, which was 182 miles on the T. & P. and 230 miles on the H., E. & W. T., was the same as the Texas commission's scale, the only difference being that the western classification was ordered to be used in connection with it instead of the Texas commission's classifications. The western classification contains a majority of higher ratings but it also contains some lower ratings than the Texas classification. Three out of the seven members of the commission dissented from the opinion on the apparent ground that they did not have the authority to make State rates in view of section 1 of the act to regulate commerce, which specifically provides that they did not have such authority. What did the Supreme Court do when this case was appealed to it? It examined the law and came to the conclusion that the Interstate Commerce Commission has the power to make State rates wherever such action becomes necessary to preserve the freest flow of commerce among the States.

Of course, the Supreme Court's interpretation is the law of the land, and stands as such until the Congress speaks again and leaves no such question open to interpretation but specifically provides that under no circumstances shall State-made rates be set aside unless and until they have been carefully examined into as to their reasonableness and found to be unreasonable by a court of competent jurisdiction. In the Shreveport case the reasonableness or the unreasonableness of the Texas rates per se was not examined into at all. The particular rates under examination have been the rates from Shreveport into east Texas points and from east Texas points into Shreveport, La. Those are the only rates the Interstate Commerce Commission ought to have the right to fix, because they are interstate and because that was the purpose of the act to regulate commerce.

We believe that the State should have the right to make rates and to regulate railroads in the matter of transportation charges just as much so as regulate them in the matter of the issuance of stocks and bonds or requiring them to make track connections or any other orders affecting their revenues whatsoever. Secondly, the Interstate Commerce Commission, at the present time, is wholly unprepared to take over the work of making rates on the intrastate traffic of all the separate States.

The State of Texas has next to the longest State line of any State in the Union. Its intercoastal canal and two navigable rivers—the navigation of each of which is being extended—its vastly differing soil and climatic conditions, crop productions, etc., its mountainous section, its marshy rice lands; and all of those things must be considered in connection with its transportation conditions.

The railroads at the Shreveport hearing, in the supplemental order, seemed to suggest taking the level of the rates from Shreveport into Texas, which are admittedly very high, and the Texas commission scale, which the carriers claim is too low, and strike a level half way between the high and low points and making that level the basis for both the Texas intrastate rate and the interstate rates from Shreveport; in other words, grade the Texas rate up and grade the Shreveport-to-Texas rate down. That is a most unjustifiable proposition, because it is presupposing that the Shreveport rates are somewhat near reasonable rates and that the Texas rates are too low. The Shreveport people, in my judgment, ask for rates from Shreveport into Texas on traffic that never moves and never has moved and never will move from Shreveport into Texas, and it seems to me it is a proposition as to which the Shreveport people are being somewhat misled.

I would like to read from the brief filed by the Fort Worth Freight Bureau in Docket 3918 just an extract from page 25 [reading]:

"The complainants' principal object in bringing this case was to get into Texas with their goods, the greater portion of which are received on low inbound carload rates (which great advantage they expect to retain), and some very few of which goods are manufactured at Shreveport. But it so happens that they do not manufacture brick in Louisiana to any very great extent, and practically none at Shreveport. Therefore, any rates that might be prescribed from Shreveport to Texas points on this commodity would be merely paper rates, and we do not think that this commission will feel justified in going to the extreme lengths of increasing the Texas rates in order to establish a scale of rates for the benefit of Shreveport's brick manufacturers of the future.

"There are probably three or four brick plants in the State of Louisiana, making only the low grade common brick; they have not the clay from which to make any other kind of brick, and very little of that. Therefore no necessity exists for any rates from Shreveport to Texas.

"It is approximately 1,000 miles, rough speaking, across the State of Texas from Brownsville to Texline; there are 125 brick plants in this State—one for every 12½ miles. From Texarkana to El Paso it is 850 miles, or one brick plant for every 7 miles.

"The last available Government Statistical Report (1913) shows that Texas produces practically three times as many brick as Louisiana, and that no fire, front, fire, or paving brick are manufactured in Louisiana.

"Under the circumstances, certainly no necessity exists for this commission, in prescribing reasonable rates to and from Shreveport, to disturb the present rates in Texas."

I would like also to read an extract from an address made by Judge William D. Williams, of the Railroad Commission of Texas, at Austin, on June 13, referring to the Sheppard amendment. Judge Williams said:

"Because of its great size and the large volume of purely State transportation in Texas, the shippers and citizens of this State are probably more seriously threatened than those of any other States, by the startling innovation inaugurated under authority of what is known as the Shreveport rate case; and yet while this is true the extent to which that case goes is generally overestimated and its effect misconceived. Indeed, I might say that if it had a greater effect, while it might substantially destroy the autonomy of the State, it would likely be less dangerous both to State and interstate shippers. For the decision of the Supreme Court of the United States divides the control of State rates between two bodies, the one State and the other National, and these two bodies, each with its incomplete control, have no means of acting together. It is not correct to say that the Interstate Commerce Commission makes rates in Texas. The Supreme Court of the United States expressly holds that it has no such power. What the commission does when it interferes is to annul rates made by the State commission and authorize the railroads to substitute therefor rates that are higher and that may be as high as the railroads desire to make them. It says, in effect, that the rates from Shreveport into Texas are greater than the rates between Texas stations for the same distances on the same commodities; we order that these differences be corrected, and we find that certain rates from Shreveport into Texas are reasonable, and these rates must not be increased. Now, under this order, the Supreme Court holds that the railroads may remove the discrimination which has been found to exist against Shreveport by increasing the Texas rates. This leaves to the railroads the following options: They may reduce all rates to or even below the Texas level, they may reduce the Shreveport rate part way and increase the Texas rate up to the same point; or they may increase the Texas rate to or above the Shreveport rate and let the Shreveport rate stand as it is. Obviously so large a discretion will be used by the railroads to their own advantage as far as they dare go.

"Instances of this are already in existence. When the railroads put in their tariffs on the Texas & Pacific Railway from Dallas east to the State line, and on the Houston, East & West Texas Railway from Houston northeast to the same line, they carefully raise all the Texas rates until they were as high as the rates from Shreveport into Texas; but there were certain other rates which from before the beginning of the case were higher in Texas than the rates from Shreveport into the State on the same commodities. The roads made no change in these tariffs, and the Interstate Commerce Commission had no power to and did not attempt to compel them to do so. The result is an equalization of rates per ton mile so far as Shreveport is concerned, but the retention of discriminations against Dallas and Houston and other Texas jobbing points.

"DISCRIMINATION AGAINST TEXAS.

"Discriminations have also resulted against Texas cities in the matter of minimum weights for carloads. Where these minimum weights were lower in Texas than on like commodities moving from Shreveport into the State, they have been raised to the same figure, but where they were already higher than the interstate minimums they have not been reduced but remain higher to this day.

"Nor is this all. Upon a supplemental application, the Interstate Commerce Commission by its order attempted to enforce equality of rates over all of what it calls east Texas, which includes the Santa Fe Railroad to the Brazos River and down the river to its mouth and everything to the east and north. A further application is now pending and may be decided any day which asks the extension of this equalization westward to the Rio Grande River and its application throughout all Texas.

"Shreveport never was and so far as a human being can tell never will be in competition for business in ninety-nine one-hundredths of this vast territory over which it seeks to control the rates. There are large numbers of comparatively well-informed merchants in many places in Texas who, except for the notoriety given it by this case, would have never heard of Shreveport and would have lived and died ignorant of its existence, but prosperous and happy notwithstanding their ignorance.

"Shreveport is not a factor in Texas business, and yet grave consideration is being given by the Interstate Commerce Commission to the claim which it makes of a legal right to control that business and to shape its destinies. It desires to say which of our industries may live and which shall die. It seeks

the power to destroy commercial centers within our borders and to build up others in their stead.

"Shreveport is not in a grain-producing territory, neither is it a center for the handling of that commodity. If it ships any grain into Texas during the year, it is probably not in carload lots and it is certainly not in larger quantities. The carload rate from Shreveport to Big Sandy, a distance of 89 miles, is 15 cents, and the carload rate for an equal distance in Texas is 11½ cents. There is a very large carload movement in Texas. There is comparatively, and probably literally, no carload movement from Shreveport into Texas, yet Shreveport would claim, and was in a fair way to secure the right in the eastern Texas district, to increase the Texas rate 35 per cent in order to save from discrimination a commerce which did not exist. The Shreveport carload rate on flour to Big Springs, some 439 miles, is 30 cents, while the rate in Texas for the same distance on the same commodity is 20 cents. If this effort succeeds, the Texas rate is to be raised by 50 per cent, and again this is done for the purpose of protecting a commerce which does not exist and which can not be produced until climatic and soil conditions are entirely changed throughout the effected territory.

"It is not possible to give all the instances in detail, and it must be enough to say that I have not been able to find an exception where the result aimed at would not increase the Texas rate on grain and grain products by from 35 to 200 per cent.

"Shreveport ships practically no live stock into Texas, but it has a rate per car to Waskom of \$16.50, while the rate per car on live stock in Texas for the same distance is \$11. The Shreveport rate to Hawkins, 94 miles, is \$25.30, while the Texas rate for the same distance is \$18. The Shreveport rate to Terrell, 158 miles, is \$33 per car, while the Texas rate for the same distance is \$22. The Shreveport rate to Dallas is \$35.75 per car, while the corresponding Texas rate of \$24. The Shreveport rate to Fort Worth is \$38.50 per car, and the Texas rate for the same distance is \$26. These are fair instances, for here again the rule is universal that the Shreveport rate is higher than the Texas rate. As I have said heretofore, Shreveport does practically no business in live stock either with Texas or with any other place. In Texas the raising of live stock is a vast industry with an investment of many millions of dollars, and upon it depends the fortunes and even the lives of tens of thousands of our people. An increase of the Texas rate such as would be necessary to equalize it with the rate from Shreveport would reflect a greater injury to the stock raisers of Texas than a year absolutely without rainfall, and yet the Interstate Commerce Commission, even if it decides this claim against Shreveport gives months and months to its consideration. With all seriousness, it considers propositions which would destroy our producers and would substitute for it something which can do Shreveport itself no good whatever, except as it might rise upon the ruins which it has created across the border and throughout this State.

"The rates on crude petroleum if it were raised to equal the Shreveport demand would be increased from the present Texas rate by anywhere from 33 to 100 per cent. The rates on sand and gravel would be doubled for the short distance for which such rates are applicable interstate. The rates on brick would be increased anywhere from 30 to 120 per cent.

"The rate on coal from Dallas to Forney, 20 miles, has been increased from 55 cents per ton on a minimum carload of 20 tons, to \$2.50 per ton on a minimum of 24 tons. If this sort of rate is put in force all over Texas or over the eastern district, our coal mines will close down in short order.

"And even this going on through an almost interminable list is not all."

Mr. BYARS. In another part of the speech he says that the Texas rates are always more than compensatory and that the railroads are seeking, through the Shreveport decision, to throw off the control on regulation by the State commission and make rates as they please [reading]:

"TEXAS PAYS TOO MUCH.

"The average freight rate already paid in Texas on strictly State business was 12.92 mills per ton-mile for 1914 and 1915, while the average rate on interstate business in Texas was 8.34 mills per ton-mile for the same period. In plain English this means that Texas business is now and in the past has been paying on the average 55 per cent more freight for the same service when done altogether in Texas than was charged if the shipment crossed the border

line. Yet the Shreveport interstate rate into Texas is much larger than the Texas rate itself. And this again means that other interstate rates are far less than those from Shreveport.

"Now, if Texas freight rates must be based upon interstate rates, why not give us the benefit of the low rates? Why force us to take as a basis the highest rates which can be found? Even the Texas railroads themselves, when they applied to the Texas commission for increased revenues, asked no such increases as they are authorized to make by eastern Texas order of the Interstate Commerce Commission.

"Examine the New Orleans rates into Texas for a moment and compare them with those from Shreveport. Agricultural implements from Shreveport pay 4.09 mills per ton-mile average to Texas points west of Marshall. From New Orleans they pay 2.4 mills per ton over the same rails, passing through Shreveport on the way to the same destinations. The Shreveport rate is 66 per cent the higher. Bagging and ties from Shreveport, 1.8 mills per ton-mile. From New Orleans, 1.1 mills per ton-mile. Difference in favor of New Orleans of about 70 per cent. Print paper from Shreveport, 3.6 mills per ton-mile. From New Orleans, 1.8 mills—exactly 50 per cent of the Shreveport rate.

"Why not let Texas have the New Orleans rate? Why compel it to take the highest interstate rates found across its borders?

"The Interstate Commerce Commission has refused to raise interstate rates for the purpose of increasing railroad revenues. In all courtesy, I ask them to consider well if, having acted thus, it is fair and just to increase those same revenues by forcing increases of State rates.

"The fact is that the order of the Interstate Commerce Commission, when applied, produced monstrous and absurd rate situations within Texas, and the Interstate Commerce Commission, misconceiving, as I believe, its powers and duties, is undertaking to correct these situations which are matters affecting State commerce alone. Under the decision of the Supreme Court the interstate tribunal may destroy Texas rates, but it can not replace them. The State commission alone can repair the damage done to State commerce by the interstate body."

Mr. BYARS. I have a pamphlet here, printed by the railroad commission of Texas, which gives a synopsis of the Shreveport case in very lucid terms. It contains the argument of the Hon. Sam H. Cowan, of counsel employed by the Texas interests, and I would like to file it for the information of the committee.

The CHAIRMAN. Would you like to have that printed in the hearing?

Mr. BYARS. Yes, sir; it might be very instructive.

Senator SHEPPARD. I had intended to present that myself, and I am very glad to have Mr. Byars do it.

The CHAIRMAN. It will be incorporated in the record.

(The pamphlet referred to is here printed in full, as follows:)

"THE SHREVEPORT CASE.

"Before the Interstate Commerce Commission. Docket Nos. 3918, 8290, and 8418. Railroad Commission of Louisiana, complainant, v. St. Louis Southwestern Railway Co. et al., defendants.

"The supreme importance of the question involved and the ultimate result which might follow a decision of the Interstate Commerce Commission and the courts to practically abolish the railroad commission of the State of Texas, and the inestimable injury to the State of Texas which might follow the final adverse decision in the case, leads me, as one feeling a great interest in the subject matter, to submit for the information and consideration of the public such matters of law and fact as to warn the public of its danger.

"The fact that there has been no manifestation of public interest in this case would seem somewhat strange and could be accounted for mainly, no doubt, because of the lack of definite information with respect to the results which possibly may follow, and the fact that the final results have not yet come.

"Considering the great controversy arising from the appointment of the railroad commission of Texas, and to that end, of the amendment of the constitution in order to regulate the rates, rules, and regulations and practices of the railroads and transportation within the State, it is still more remarkable that when the public is confronted with the proposition that the Interstate

Commerce Commission may abolish the constitution, statutes, and acts of the railroad commission of Texas, comparatively little heed has been paid to it.

"On March 11, 1912, the first of these cases was decided by the Interstate Commerce Commission, opinion by Commissioner Lane, reported in 23 I. C. C., 31. The essential matters in controversy are thus stated by Commissioner Lane (p. 33):

"This proceeding places in issue the right of interstate carriers to discriminate in favor of State traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first-class traffic to the eastward from Dallas a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. For further illustration of the rate situation, reference is made to the appendix of this report.

"The railroad commission of Louisiana has brought this proceeding under direction of the legislature of that State for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas; and (2) to end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas State traffic and against similar traffic between Louisiana and Texas.

"The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that they are compelled by the railroad commission of Texas to effect the discrimination here involved."

"The commission, after elaborate reasoning with respect to the powers conferred upon it by the act to regulate commerce, held in its final conclusion that the existing class rates out of Shreveport to Texas on the Texas & Pacific Railway and on the Houston East & West Texas Railway, were unjust and unreasonable, and fixed a scale of class rates to be applied up to a distance of 182 miles on the Texas & Pacific Railway and 230 miles on the Houston East & West Texas Railway.

"It was held that the maintaining of the higher rates to and from Shreveport and points in Texas than are maintained from cities in Texas to such points, constituted an undue preference and advantage to the Texas cities, and a discrimination that is undue and unlawful against Shreveport; hence that the order should be issued directing the carriers to maintain rates no higher than the scale prescribed as between the points named, and that the Texas & Pacific Railway Co. and the Houston East & West Texas Railway Co. cease and desist charging higher rates on commodities from Shreveport than are contemporaneously charged for the carriage of such commodities toward Shreveport for an equal distance.

"Commissioners Clements, Harlan, and McChord dissented, holding that the commission was without jurisdiction to fix the State rates. Commissioner Prouty concurred, but in his concurrence stated (p. 49):

"While this commission can not establish and should not attempt to establish, directly or indirectly, a State rate, it must in the exercise of the duty put upon it by the act to regulate commerce determine whether the discrimination exists, and in doing that it may and should examine the State rate in comparison with the interstate rate."

"So it appears from the three dissenting opinions and the qualifying concurring opinion of Commissioner Prouty that had the case turned upon the matter of fixing the State rates, it would have been decided adversely by the Interstate Commerce Commission.

"This case reached the Supreme Court (234 U. S., 342, 58 L. Ed., 1341) on the question as to the right of the Interstate Commerce Commission to make an order in accordance with its findings, which are sufficiently outlined above, and the decision of the commission and its order was upheld by the Supreme Court, which in its final conclusion said (234 U. S., 369, 58 L. Ed., 1351):

"So far as these interstate rates conformed to what was found to be reasonable by the commission, the carriers are entitled to maintain them, and they are free to comply with the order by so adjusting the other rates, to which the order relates, as to remove the forbidden discrimination. But this result they are required to accomplish."

"The first section of the act to regulate commerce as originally passed and continued up to this time contains the following proviso with respect to the transportation of passengers and property.

"Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

"The Supreme Court held that this proviso did not apply to this case, and in construing it the Supreme Court said (234 U. S., 358, 58 L. Ed., 1351):

"These words of the proviso have appropriate reference to exclusively intra-state traffic, separately considered; to the regulation of domestic commerce, as such. The powers conferred by the act not thereby limited where interstate commerce itself is involved."

Thus the proviso in section 1 of the act supports the contention that Congress intended to give the Interstate Commerce Commission the power which it exercised in the case. Thus stands the law on that subject at this time.

"In June, 1914, the Louisiana commission, and as the record shows the Shreveport commercial interests, brought a petition for a supplemental order to extend the rate structure as established in the previous decision to the whole State of Texas. This the Interstate Commerce Commission declined to do, but divided the State into eastern Texas by a line drawn through Gainesville and thence down to the Brazos River and to its mouth and prescribed a scale of rates for the territory on that line and east thereof, which should be applied to shipments wholly within the State of Texas moving toward Shreveport. Following upon that decision, which was rendered June 17, 1915, the roads published their class rates on traffic between all stations in east Texas and filed the same with the Interstate Commerce Commission and furnished copy thereof to the Texas commission. The Interstate Commerce Commission in this supplemental case, also with respect to the territory denominated eastern Texas, provided for and ordered that the carriers should cease and desist charging higher rates on any commodity from Shreveport into eastern Texas than was charged for the carriage of such commodities for an equal distance from eastern Texas toward Shreveport, and that such commodity rates should not exceed class rates. Those commodity rates were not published. The western classification was required to be observed.

"Upon the publication of these class rates in eastern Texas protests were filed by various commercial interests of the State against the same, and the commission suspended the tariffs and directed an investigation of the entire subject matter involved in all the Shreveport cases, which included the further supplemental petition of the Railroad Commission of Louisiana, in which it was again sought to have the action of the commission in prescribing rates within the State of Texas extended to the entire State.

"The whole matter was heard at Houston before Commissioner Hall and has been briefed and argued before the commission. If the commission should sustain the former decision and the contention of the Louisiana commission, the effect would be that the Interstate Commerce Commission would prescribe the rates within the State of Texas and apply thereto the western classification and exercise all such powers in regard to the matters pertaining to transportation as it might exercise in regard to the interstate rates, and then the Texas commission, for all practical purposes, would be abolished. It would not do to say that the Interstate Commerce Commission might adopt in some instances, or might adopt in all instances, the rates as fixed by the State commission because the proposition back of it all is that the power and authority exists with the Interstate Commerce Commission and not the Railroad Commission of Texas.

"As subsequently will be pointed out, the remedy therefor lies with Congress to restrict the power of the Interstate Commerce Commission so that it can not have this effect, and in order to do so, to amend the proviso of section 1 as has been quoted hereinabove, of the act to regulate commerce so as to place it beyond cavil that as to all intrastate transportation, rates, rules, and regulations the power of the Texas Railroad Commission may be exercised.

"As stating what is believed to be the correct position of the State and the position which was taken by the Dallas Chamber of Commerce and Fort Worth Freight Bureau, the argument made by S. H. Cowan before the Interstate Commerce Commission in opposition to the exercise of such power by the Interstate Commerce Commission is submitted, as follows:

"ARGUMENT OF MR. S. H. COWAN.

"Mr. COWAN. May it please the commission, time is at least the essence of this argument. I have prepared some matters that go to the very foundation of this case which I desire to present to the commission, and I have, therefore, reduced them to writing in order that I may make no mistake in regard to them, and which, with your forbearance, I will read.

"Reduced to its last analysis, the issue in this case is whether the Interstate Commerce Commission, should it find a difference in rates per mile in Texas as fixed by the Texas commission, intrastate, compared to rates between Texas points and Shreveport, declare that to be a discrimination, and, based on that, take jurisdiction to prescribe all rates, classification, rules, and regulations of all intrastate traffic within the State, and thereby supersede the former rates and regulations of the State of Texas, whether made by the Texas commission or the legislature.

"Stated in another form, to abolish the State commission and set aside the State laws, and even deprive it of the benefits of its constitution providing for the railroad commission.

"These carriers seem to think they have found an easy road to accomplish these wonderful ends, almost by a simple twist of the wrist, but they may find it a rocky one before the end of the journey which starts with loud acclaim.

"It was mentioned by this commission in the previous decisions of the cases now on rehearing that the Texas commission was not a party, and though some of its members were present at the hearing, did not offer any evidence. Whether that is by way of criticism or rebuke of the Texas commission, it has been made use of by these carriers as such.

"It has no place here. The five millions of people of the greatest State of the Union, almost in its swaddling clothes of development, with its 18,000 miles of railroad, and its great harbors, are not subject to a judgment by default before this commission that will deprive the people of Texas of control and utilization of these facilities in intrastate transportation, to the upbuilding of its great industries.

"The Texas commission has the right to stand on the constitution creating it and the law defining its powers, and to proceed to exercise that power as an agency of the State according to its judgment for the upbuilding of that great Commonwealth, and in the manner which it deems fair to the railroads as an important factor in the progress of the people. This we must assume it has done to the best of its ability under the constitution and laws of its creation, and is not to be censured because it did not appear in a case like this where those rights are sought to be taken away.

"This case at the threshold marks a milestone on the road of railroad control, leading to the abolishment of State commissions and repeal of State statutes by the commission, or to a clearly defined limitation of the powers of this commission. It means the control or not of the commerce and development of the State by its own policy as to intrastate commerce or a control of intrastate commerce by this commission.

"The only source of that jurisdiction contended for is where this commission finds a discrimination—an unjust discrimination—in State railroad rates and transportation and interstate.

"Whether the fact of unjust discrimination exists involves a multitude of things and conditions, and is at last a mere mental conclusion, and may be a mere figment of the imagination, yet it is to be taken as a means of destroying the entire rate situation of a State or control of its local commerce.

"The very essence of the jurisdiction of this commission to act at all is dependent on that finding.

"No discrimination can exist except by the effect of some act prejudicial to the complainant or others, and a mere difference in the amount of freight rates in one locality compared with another can not be a discrimination unless it affects the business interest of the localities or persons served or commodities transported. That must depend on the inbound as well as the outbound rates, yet the commission in this case has ruled out of consideration the inbound rates.

"In this it is in error, as is shown by the decisions of the Supreme Court of the United States, as well as its own decisions.

"At page 46 of my brief I have cited the Texas & Pacific case. This commission will remember that case as being one of the initial cases with respect to undue preference, that being a case where the commission declined to consider the fact that freight had come in by vessel to New Orleans. In reversing that case and sending it back to the commission, the Supreme Court of the United States said:

"The very terms of the statute, that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, corporation, or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not to be enforced, but that all circumstances and conditions which reasonable men would regard as affecting the

welfare of the carrying companies, and of the producers, shippers, and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act."

"For the entire period of its existence the commission did not suppose it could control interstate traffic or rates up to the decision of this case.

"Is it not a long step to change the power itself of that control to this commission even in the twinkling of an eye by this commission finding that there is a discrimination between State rates on intrastate traffic and interstate rates on interstate traffic? Can it be supposed that any such metamorphose was even thought of by Congress? That is to say, can it be supposed that Congress, not having specifically provided for such a condition, could have supposed that this commission should exercise jurisdiction of the control of the intrastate traffic by the mere fact of finding that in a given instance there was a discrimination? Let that discrimination be corrected. It ought to be corrected. It is within the jurisdiction of this commission to require it to be corrected; but to make use of that finding to draw to itself jurisdiction in their control of all intrastate rates in Texas, and, therefore, the classifications, rules, and regulations, as it seems to me, is something that never could have been thought of as intended to accomplish that object; neither did the original decision in this case attempt to do so. If you will observe in the concurring opinion of Judge Prouty, he stated that this commission could not attempt, directly or indirectly, to control the intrastate rates. This commission went no further in that case than to define what the rates ought to be and the basis of those rates to and from Shreveport. That, we concede, is entirely within its jurisdiction, but to make use of the mere fact of the existence of the discrimination to take charge of the entire subject of the making of all rates and rules and regulations, and, therefore, of the conditions of transportation within the State of Texas, was a marvelous jump in the line of trying to control the rate subject of this country.

"The relationship of the railroads and the complainants manifests itself by the absence of controversy as between them on any point and a concurrence of all of them in seeking the same thing in the same way.

"The prime object of the railroads is to obtain an increased revenue on Texas intrastate business.

"At the conclusion of the supplemental hearing the examiner observed that they—complainants and defendants—had no dispute. In the decision of the commission in the same case it was stated that there were no new facts developed except a tentative agreement to extend the making of intrastate rates in Texas over the entire State instead of a division of it on and east of the main line of the Santa Fe from Gainesville to the Brazos River, thence to its mouth, in which territory this commission prescribed the rule to be observed.

"That agreement has been put into actual operation here by the new complaint, and they all unite in the contention that to prescribe the rates which you did prescribe would result in a most anomalous condition; would produce discriminations and upset the entire traffic of the State. Therefore they have all united in the contention that you are to fix intrastate rates throughout the entire State of Texas because of a mere 20-mile haul from the State line to Shreveport. To use the language of Gov. Roberts in speaking of San Augustine in his notable book, he said it was the center of the surrounding country. According to the proposition asserted here, Shreveport is the center of the earth, and you should take that into consideration, because there is discrimination practiced by the railroads there which they could readily remove, certainly at the smallest sort of expense, and that you are to seize jurisdiction just because of that.

"They all agree upon another proposition, that Shreveport should be treated as though it were within the State of Texas. We could better afford to buy that entire territory than to visit Mr. Atkins or Mr. Luther Walter on the public, who, like the Pied Piper of Hamelin, draw everybody to them, and with their flute they follow. It seems to be the most marvelous proposition I have ever seen, transforming the jurisdiction transmitted by our constitution to our commission and visiting a burden on this Interstate Commerce Commission which it is unprepared to fulfill.

"On the hearing for the increase in Texas rates before the Texas commission, and after class tariffs had been published which are suspended in this proceeding, I. & S., 710, a motion was made by the attorneys for the Texas commission to dismiss or indefinitely postpone the further consideration of their application for increased rates because they were denying the jurisdiction of the Texas commission and asserting that the Interstate Commerce Com-

mission had jurisdiction to prescribe the rates within that part of Texas called east Texas, for which they had filed their tariffs making the increases those which they desired. But they strongly fought that proposition, and the expressions in reply thereto were that the Texas commission ought to advance the Texas rates, and if it did so to a point satisfactory to the railroads, the same would be applied to Shreveport traffic.

"Now the railroads come forward with a list of commodities where satisfactory advances have been made, another where some advances have been made that are not enough to satisfy them, and another in which no response has been made by the Texas commission to the application for advances.

"As I say, they have confronted you with the statement or a list of some of those advances that have been made, and, as Mr. West said, they are willing to apply them to Shreveport and thus relieve it that far. Some advances have been made which do not suit them, and therefore I assume they do not expect to go by the Texas rates in that particular; and in other instances no report has been made by the commission. The object of obtaining greater revenue being at the foundation of the action by both the complainants and the railroads, it is so apparent that a wayfaring man, though a fool, need not err therein. It is a conspiracy in which the minds of all meet and concur to the end of obtaining additional revenue for the railroads in the State of Texas, and so the burden of the complaint, as shown by the argument here, and as shown by their briefs, is that they are not getting enough revenue. It is not for this commission to resort to increasing the intrastate rates in order to produce revenue for them; neither can you assume jurisdiction because you may think they are not getting enough, because that jurisdiction has not been committed to you.

"Take the single item in which we have been very much interested for a great many years, the item of beef cattle. (I have come to a point where they call me a steer, which is denied.) On beef cattle in Texas the single line rate for 200 miles is 17.5 cents; that is, for distances from 200 to 230 miles under the Texas commission's scale the rate is exactly the same—17.5 cents. The Texas commission's rates on beef cattle and stock cattle are made by the mileage scale, not just every mile counted, but it jumps a certain amount in cents per hundred pounds for certain increased distances. For instance, 200 miles is 17.5 cents and 229 miles is 17.5 cents. Why could they not apply the Texas scale with all reasonableness to such few shipments as go into Shreveport? That would have been an easy proposition. Furthermore, the small amount of shipments that move there could not have affected these railroads. It simply shows you that the intention in alleging discrimination there is for the purpose of having you fix a higher scale for the entire State of Texas for the handling of the product of more than 6,000,000 head of cattle a year and to take out of the hands of the Texas Railroad Commission the making of these rates. That is their object, and none other. Will this commission lend itself to that? If it finds a discrimination existing in the cattle rates under the Texas scale, and under some scale they have made into Shreveport, will they not require the adoption of the Texas scale to Shreveport rather than enter upon the great undertaking of fixing the whole of the rates within the State of Texas for the transportation of the enormous number of cattle that are transported in that State? The same thing will apply to nearly all sorts of traffic that moves by the mileage scale. Take, for example, up to 245 miles, according to your class tariffs and you will find the same thing. It is but slight trouble to have applied the Texas commission rates as they existed in those cases, as Mr. West assures you they have done or will do in these cases where the Texas commission has now advanced certain commodities. Why not? That is the simple way to do it.

"As I said in the outset, this proceeding marks a new departure in the progress of railroad regulation in this country. It can not be expected that the people will give up their first experiment of controlling rates and regulations within the State, abolish the State commission, and deprive their legislature of the power to act itself should it see fit to do so, just because of the mere finding of this commission that some discrimination exists in some given instance.

"I trust this commission will consider this subject from the standpoint that if you have jurisdiction to remove the discrimination you will not resort to the method which has been pointed out. It reminds me of a case where, in trying a murder case, an old gentleman was called as a venireman. Under our Texas statute each venireman is required to rise and answer questions touching his qualifications to serve, and the first question is, "Have you any conscientious scruples in regard to inflicting the death penalty as a punish-

ment for crime?" When that question was propounded to this old gentleman, he said, "Well, judge, I don't reckon I have, but," he said, "I think it ought to be very sparingly administered." So it is with this commission. They ought very sparingly to administer that enormous jurisdiction which the Supreme Court seems to give them when it comes to stepping into a State and fixing State rates because of some discrimination that exists somewhere.

"I must hasten to another point for fear I overstep my bounds in time.

"Mr. Commissioner Lane said in the first opinion that if the inbound rates to Shreveport were artificial—that is, made by the railroad—then that was to be taken into consideration. The record in this case shows that none of the shipments move into Shreveport except by railroad. I am invoking, therefore, that doctrine announced by this commission in that case, and when you adjusted the Texarkana-Shreveport rates relatively you then considered the fact of the movement of traffic in by rail to both places, but you gave to Shreveport a somewhat lower rate on some things at least if the traffic moved through the Vicksburg Crossing.

"There is no difficulty in adjusting this discrimination except the difficulty that arises out of the desire on the part of our railroad friends to secure larger earnings for themselves in Texas. Maybe they ought to have them, but this is not the tribunal to come to to get them simply by first securing you to say that there is discrimination, and therefore you will take over the fixing of all of those rates. It is just like the case of the doctor who said if he could throw a man into fits he knew that he could cure the fits.

"The railroad commission of Texas has a multitude of things to consider. How could we establish a glass factory, Mr. West, on the Missouri, Kansas & Texas Railroad at Wichita Falls without some advantages that would move that glass out to the points of consumption? It was moved there from a point in Kansas. Innumerable things of that kind move into Texas. Can we have nothing to say with regard to the development of industries in our great State? Shouldn't we be accorded rates which, under the circumstances, are reasonable and which will produce revenue which was not produced before? It is not a reduction of revenue. It is an increase of revenue. So it was throughout the entire hearing for the railroad commission of Texas.

"Many instances were brought up where it was shown that increased rates would actually reduce the revenue, so if revenue is the question for this commission to decide, you have not half heard the case. I say it is not. The commission has no power or jurisdiction because of its desire to increase the revenue, to take jurisdiction over the rates, regulations, and practices of the State of Texas in order to cure a discrimination which can be done with great ease by simply adding the 20 miles to the Texas rates according to the scale of the Texas rates, and where it happens that that will increase the rate, then let it be increased, but where it happens that it would not increase the rate anyway, then the very same privilege would exist for Shreveport when it ships in the other direction into Texas. You will have to consider the facilities for doing business. You will have to consider what it costs them to secure the raw material, as in the case of peanuts, which have been mentioned here, in order to know whether or not there is a discrimination. It can not exist in the abstract. It is always in connection with the facts. Those facts must apply to something concrete, something that is being done, and when they speak of the fact here that Shreveport can go only such and such a distance, and that Dallas and Fort Worth can only go such and such a distance, why is it? Because of two rates, the inbound and the outbound, and the cost to manufacture. It is said, of course, that in many cases this commission will not attempt to adjust commercial conditions, and yet you can not decide the question of discrimination in any other way than by considering who it hurts, how it hurts them, and what it is that hurts them.

"So it is in this case that I figure, if I may be permitted to say so, that this commission has made a mistake in not considering the inbound rail rates to Shreveport as well as to north Texas points.

"One more point, your honors: It was assumed that the rates up to 245 miles were not too high, but there was no evidence in the record in the original case, and there was none in the supplemental case, outside, perhaps, of an expression of opinion given by my friend, Mr. Atkins, for whom I have the very highest regard as to his ability, but maybe not so much respect for some of his opinions—as I say, there was no testimony to show that those conditions and circumstances of transportation were the same.

"It is announced here that there is a different situation when you apply the matter of relative conditions to traffic moving north and south and to that moving east and west. Certainly. Why?

"You take the main line of the Gulf, Colorado & Santa Fe Railroad, that moves traffic to Fort Worth and Dallas, and look in I. & S., 555, at the freight operation sheets which were filed in that case, and you will find there that the density of traffic on the main line of the Santa Fe in Texas runs more than 1,000,000 tons per mile of line. It is one of the heaviest densities of traffic in this whole country. You will find the main line of the Missouri, Kansas & Texas runs that. Those main lines are the ones which handle this stock traffic. You will find that so far as the Cotton Belt Railroad is concerned, it can scarcely furnish the axle grease for the cars that haul its ties. There is the Cotton Belt on one side and the Texas & Pacific on the other, both reaching Shreveport, both reaching there from Fort Worth. The Texas & Pacific are making money, and the Cotton Belt people say they are losing money. How in the world they have lost it for those 30 years I don't know, but they say they have been losing it for 30 years. Does that show a difference in the condition of transportation? If these railroads are not prosperous to some extent in Texas I would like to know why. We have had the greatest railroad development in Texas in the last 10 years by far of any other State in the Union. The Santa Fe has plastered the Panhandle all over with railroads, and they have one of the best railroads there is in the West, and are still acquiring and building railroads, not right at this time because they have an abundance of them. Of course the Orient Railroad can not make any money, and the Brownsville Railroad can not make any money. A lot of these railroads were built in anticipation of a development which did not take place, and consequently they can not make any money, but none of that is a question for this commission to decide. The question is, Should the discrimination at Shreveport be removed? Let the railroads remove it as they please. If they think they can develop railroad commission rates, as Mr. Commissioner Lane suggested, let them try it. They can not plead here that this was put in by the rules of the commission of Texas. That was one of the things which was urged in the original case. Those rates have been charged in Texas. They said, "You made no effort to withdraw them."

"Don't forget another thing. There was a time when the Texas commission, on account of the Texarkana situation, made a certain percentage of reduction in rates up to Dallas and Fort Worth and that territory, but that has long since passed. It was one of those emergency rates that were taken out, and the flat rate applies to-day just as it does all over the State. You can not assume that at the end of 245 miles these rates are a factor upon which to build an additional charge. Why? Because these rates up to 245 miles were made with the view of taking care of the extra haul that would move beyond that for no additional charge. Do you suppose the railroad commissioners of Texas were so ignorant that they did not look at it that way? Judge Reagan was there at the time the compromise was made and the rates were agreed to, but it was not a binding agreement. It could not be under the law. They were put in, however. They were not ignorant men.

"The 245 miles embraced within is compensation for the balance of the transportation into common point territory. To use that as a factor here on which to begin to build your additional rates is a subject that I say this commission is not investigating. The Texas & Pacific has a very heavy density eastward, but the Cotton Belt does not. Furthermore, the movement of empty cars, which is an enormous proposition when it comes to the matter of expense, is northbound and eastbound, whereas, from Shreveport into Texas the empty movement is far less in proportion.

"THE CHAIRMAN. You have consumed your time. If you desire to do so, the commission will be glad to have you file with the reporter any part of your argument which you were unable to present.

"MR. COWAN. There are a great many matters that I would like to urge before this commission, but I think I have pointed out enough already to show the absurdity of the method that is now being attempted to be enforced upon this commission.

"I thank you."

"The position of the Louisiana interests and of the Texas railroads was in support of the Interstate Commerce Commission exercising this power. The Louisiana interests wanted to secure all of the benefits of the Texas rates or to deprive the Texas people thereof, and the railroads to use this means of securing an increase in revenue.

"It is plain, therefore, that under the decision heretofore rendered by the commission, and the decision of the Supreme Court here referred to, that if the people of this State are to have the benefit of regulation by law or by the Texas commission, of the railroad rates, regulations, and practices as applied to purely State business, it must seek that right through an act of Congress. It is safe to say that no State is so situated that the Interstate Commerce Commission may not find a discrimination existing by virtue of the State rates compared to the interstate, and based upon that finding to take over the jurisdiction, should it decide to do so, and prescribe all the State rates and matters pertaining to transportation and which affect the service and rates.

"Therefore, to secure the rights of the State which have been exercised up to the date of this decision, the proviso of the first section of the act should be so amended as to read:

"*Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid: *And provided, further,* That the fact that a discrimination or a preference may be found to exist by reason of the difference between any State rate, classification, rule, regulation, or practice of any common carrier and the interstate rate, classification, rule, regulation, or practice of such carrier, whatever the effect may be upon interstate commerce, shall not authorize the Interstate Commerce Commission, by virtue of any of the provisions of the act to regulate commerce, to in any wise annul, abridge, or modify the power of the State, exercised through its legislature or through any commission or agency established for that purpose, to prescribe all such rates, classifications, rules, regulations, and practices as may be provided by the laws of such State, or to interfere with the free exercise thereof, with respect to intrastate transportation or commerce."

"With this amendment the law will be as it was supposed to be at the time of the enactment of section 1 in 1887, leaving to the States their rights in the premises with respect to strictly intrastate business, and leaving to the Interstate Commerce Commission its full powers and jurisdiction with respect to interstate business. The question is: Shall the State regulate the State business and preserve the power of the Constitution, laws, and agencies to that end? If so, the power of Congress must be invoked to do so."

Mr. BYARS. That is all I care to say, Mr. Chairman.

Mr. SHAUGHNESSY. I ask at this point to have introduced the testimony of Earle B. Mayfield, commissioner, of the Railroad Commission of Texas, beginning at page 61, and also the testimony of Hamlin Palmer, of the Amarillo Chamber of Commerce, beginning at page 89. This testimony relates to the Shreveport situation.

(The matter referred to is here printed in full, as follows:)

STATEMENT OF MR. EARLE B. MAYFIELD, RAILROAD COMMISSIONER, STATE OF TEXAS.

Mr. MAYFIELD. Mr. Chairman and gentlemen of the committee: I am here to represent the State Railroad Commission of Texas in favor of the Sheppard bill, and I desire to thank the committee for giving me an opportunity to make a few remarks in favor of Senate bill 5242, as introduced by our junior Senator. Before discussing the merits of the bill, however, I desire to reply briefly to certain remarks made by Mr. Dorsey, of Texas.

From the reading of the statement by Mr. Dorsey, which he has just filed with the committee, I could not tell whether he was in favor of the Sheppard bill or whether he was opposed to it, and I am sure the committee experienced the same difficulty, but being acquainted with the gentleman, and knowing something about his maneuvers with reference to rate matters down in Texas, I knew in advance that Mr. Dorsey was opposed to the Sheppard bill, and so I take this opportunity to inform you of the gentleman's position.

Mr. Dorsey says that he represents the Farmers' Union of Texas. I challenge that statement and call upon Mr. Dorsey to show his credentials. Mr. Dorsey has no more authority to speak for the Farmers' Union of Texas here in opposition to this measure than has the attorney for the railroads, who sits by his side. I am a member of the Farmers' Union of Texas myself, and I know something of the sterling manhood and patriotism of the men who

compose that organization, and I say to you, Mr. Chairman, that Mr. Dorsey is placing the Farmers' Union of Texas in a false light before this committee, when he stands here and claims that he has authority to represent the Farmers' Union of Texas in his opposition to the Sheppard bill.

The greatest political controversy that ever occurred in Texas was between James S. Hogg and George Clark. This contest occurred back in the nineties and the main issue between these two distinguished statesmen was whether or not a railroad commission should be created in the State of Texas. Hogg championed the creation of the commission and Clark opposed it. The contest was long and bitter and will ever be remembered in the political history of our State. All special interests, including the railroads, supported actively the candidacy of Mr. Clark, but the farmers of Texas rallied to the support of their friend, James S. Hogg, and he was elected governor of our State and the railroad commission was established. The Railroad Commission of Texas, Mr. Chairman, owes its creation more to the farmers of our State than probably to any other class of people. The farmers of Texas believe in their railroad commission, and when I see a farmer from our State appear before this committee, claiming that he represents the Farmers' Union of our State and oppose a bill introduced by the junior Senator of our State, the purpose of which bill is to keep our State commission from being destroyed, it makes me blush with shame. I repeat, Mr. Chairman, that Mr. Dorsey has no authority to speak for the Farmers' Union of Texas against this measure, and we ask this committee not to consider him as a representative of the Farmers' Union of our State. If Mr. Dorsey has the authority, it will not take him long to produce it, and I again call upon him to show us where he got his authority to speak for the Farmers' Union of our State.

Mr. Chairman, the Texas commission has been conducting an investigation into the question of the reasonableness of our State rates. That investigation has covered over a year. During that time the commission received a number of letters from Mr. Dorsey, requesting the commission to raise the freight rates on cotton, live stock, etc., and advising the commission that the farmers of Texas were willing to stand an increase in freight rates on all farm products. These letters, received under the signature of Mr. Dorsey, were so written that they bore suspicious earmarks, and we summoned Mr. Dorsey to appear before the commission and to testify as to who wrote those letters. The records of our office will show that Mr. Dorsey testified that most of those letters were written or prepared by Mr. R. D. Bowen, of Paris, Tex., a man who spends a great deal of his time in the city of New Orleans and at other points in the State of Louisiana. A few days ago Mr. Bowen was compelled to give his testimony before the commission of Texas, and when interrogated as to whether or not he wrote the letters which the commission had received under the signature of Mr. Dorsey, did not deny nor controvert the testimony of Mr. Dorsey, but admitted that he had assisted and had aided in the preparation of most of those letters. When Mr. Bowen was confronted with the vouchers from the Gulf, Colorado & Santa Fe Railroad, showing that he had received the sum of over \$1,500 during the thirtieth legislature for services rendered that railroad in behalf of its merger bill and against the 2-cent passenger bill, he admitted to having received the money, but claimed that none of the money went to him directly, but was paid to him for the purpose of reimbursing him for what he had paid out to others. These are the men, Mr. Chairman, who are here opposing the measure which seeks to protect the life and integrity of the Texas State Railroad Commission.

Now to the merits, Mr. Chairman, of the measure that is before you for consideration. The distinguished gentlemen from Louisiana would have this committee believe that the only question that is involved in this controversy is whether or not the city of Shreveport, La., should have fair and just rates. They are correct in saying that the necessity of the Sheppard measure grew out of the decision of the United States Supreme Court in the Shreveport rate case. They are not correct, however, when they claim that the Sheppard bill would nullify the benefits which the city of Shreveport has won under the decision of the Supreme Court of the United States. They are clouding the issue, Mr. Chairman. We say unhesitatingly that every rate discrimination against the city of Shreveport should be removed. Not for a moment would we contend that the city of Shreveport or any other city in this Union should be discriminated against.

We want no wall erected around the State of Texas, because we desire commerce to flow freely between Texas and our sister States. Right here, Mr.

commanded the railroads to remove any discrimination that might exist against the city of Shreveport. The trouble arose when the Commerce Court rendered its decision.

The Commerce Court treated the case as if the Interstate Commerce Commission had found the interstate rates to be reasonable, and attributed to the Interstate Commerce Commission such finding of fact which to this good hour it has never found. The opinion of the Commerce Court was based upon that assumption and but for that assumption the Commerce Court could never have rendered the opinion which it did.

The railroads appealed the case to the Supreme Court of the United States, where it was argued on October 28, 1913, and on June 8, 1914, the Supreme Court of the United States sustained the decision of the Commerce Court in an opinion written by Mr. Justice Hughes, Mr. Justice Lurton and Mr. Justice Pitney dissenting. The Supreme Court of the United States fell into the same error as the Commerce Court. Assuming that the Interstate Commerce Commission had found the interstate rate from Shreveport to certain Texas points to be reasonable rates, the United States Supreme Court held that the railroads would not be compelled to reduce those rates, but told the carriers that they could remove the discrimination against the city of Shreveport by raising the Texas State rates to the level of the interstate rates.

It might be presumptuous, Mr. Chairman, for one so young in the practice of the law as I to charge the United States Supreme Court with such an error. I will therefore not leave my statement unsupported, but will prove it by the words of the able assistant attorney general of Louisiana, who sits so gracefully before us.

I hold in my hand a copy of the proceedings of the National Association of Railway Commissioners, which met in this city November 17-20, 1914. The Williams resolution was under discussion by the association, and the assistant attorney general of Louisiana, Mr. Barrow, was making an argument in opposition to the resolution, when Commissioner Atkinson, of Missouri, interrogated Mr. Barrow as follows (I read from page 212) :

"Mr. ATKINSON of Missouri. I should like to ask the learned attorney general of the State of Louisiana whether the Interstate Commerce Commission found, as a fact, that the interstate rates were reasonable and just and could not be reduced in the Shreveport case? I have heard it stated that they did not pass on that question, and yet that seems to be the very crucial point which the Supreme Court assumed to have been passed upon in the decision, in the opinion written by Mr. Justice Hughes.

"Mr. BARROW of Louisiana. The order of the Interstate Commerce Commission has never found any rates to be reasonable and just except the class rates which they have prescribed as to three railroads only, and that was really a test case. It is a question of authority with the Interstate Commerce Commission. It has never been presented in this form before, and as you know the whole country was interested and agitated over the case, and the question was whether the commission in any event had the authority to remove that discrimination by causing the rates to be advanced or reduced.

"Mr. ATKINSON of Missouri. If the Interstate Commerce Commission did not determine that the interstate rates from Shreveport into Texas were reasonable and just and could not be reduced, how could the Supreme Court or the Interstate Commerce Commission strike down the State rate, when the State commission was not made a party to the suit, and the court clearly holds, in the Minnesota case, that it had no jurisdiction to make State rates.

"Mr. BARROW of Louisiana. My answer to that is that the commission has not yet stricken down the State rates. They may do so under the decision of the Supreme Court, but whether they will do so or not is a question which of course we can not anticipate."

The railroads in Texas affected by the decision of the United States Supreme Court in the Shreveport case issued new tariffs applying on purely State traffic moving toward Shreveport. Those tariffs bore no I. C. C. number, but stated upon their face that they had been issued in accordance with the decision of the United States Supreme Court in the Shreveport case. Is it not strange, Mr. Chairman, that those tariffs bore no I. C. C. number, but simply stated that they had been issued in accordance with the decision of the United States Supreme Court?

Following the decision of the United States Supreme Court in the Shreveport case, the railroad commission of Louisiana filed a supplemental petition before the Interstate Commerce Commission on June 18, 1914, asking that the

original order of the Interstate Commerce Commission which affected only three railroads, viz, the Texas & Pacific, the Houston, East & West Texas, and the Shreveport Railroad, be enlarged so as to cover the entire State of Texas and be made to embrace every railroad in Texas. Such an order, if it had been granted, gentlemen, would absolutely wipe out the entire system of State rates on purely State traffic as promulgated by the Texas commission, provided the courts upheld the order.

Mr. WALTER. Not in the supplemental plea.

Mr. MAYFIELD. Yes, sir; in the supplemental plea.

Mr. WALTER. In what case?

Mr. MAYFIELD. In the case which I am discussing, the Shreveport case, and on June 23, 1914, the Interstate Commerce Commission entered an order requiring all the carriers to show cause why such supplemental petition as filed by you should not be granted. In your petition you alleged that the other railroads in Texas, than the three above mentioned, would not establish the same scale of rates which the Texas & Pacific, the Houston, East & West Texas, and the Shreveport Railroad had promulgated under the decision of the United States Supreme Court except upon a supplemental order, and I can not understand why you would question your own petition. I refer you, Mr. Walter, to the second decision of the Interstate Commerce Commission in the Shreveport case, page 474, which decision was written by Commissioner Hall. Further hearing was had by the Interstate Commerce Commission upon this supplemental petition in the city of Shreveport on October 27, 1914. At this hearing the cities of Dallas, Fort Worth, and Texarkana filed petitions of intervention, but these petitions were denied upon the ground that they sought to enlarge the real issues in the supplemental proceedings. Presently we shall see, gentlemen, if the "real issues" were in fact enlarged and who did the enlarging. When the supplemental petition was heard at Shreveport, October 27, 1914, the "parties" to the case submitted nothing, as Commissioner Hall says in his opinion on page 476, "except a 'tentative agreement' between the parties, upon which to go further and fix reasonable maximum rates, both class and commodity, effective over all the lines of all these defendants throughout the great State of Texas."

Who were the parties to the case? The "parties" to the case, Mr. Chairman, were the city of Shreveport, the Louisiana State Commission, and the Texas railroads.

What was this "tentative agreement" to which Commissioner Hall referred in his decision? Why, it was nothing more nor less than an "agreement" between the city of Shreveport, the Louisiana State Commission, and the Texas railroads to divide the great State of Texas into two separate and distinct States for rate-making purposes. The Interstate Commerce Commission adopted this "tentative agreement" when it said in its decision on June 17, 1915, "We shall confine our further order to the territory between Shreveport on the east, and a line drawn through Gainesville, Fort Worth, and Waco via the Brazos River to the Gulf of Mexico on the west. We shall refer to that part of Texas on the east of this line as eastern Texas." So anxious were some of the railroads, Mr. Chairman, to become a party to this "tentative agreement" that they entered their appearance and waived notice, one of them being the San Antonio & Aransas Pass Railway, which fell west of the line, but would have been "in it" had the "tentative agreement" been to embrace all Texas instead of taking only half of it.

Let us not forget, Mr. Chairman, that in their supplemental petition in the Shreveport case these gentlemen who sit here in opposition to the Shreveport measure petitioned the Interstate Commerce Commission to prescribe rates for the entire State of Texas, and now we find them "backing up" on that proposition and filing a "tentative agreement" in which they say they would be satisfied to take only half of our State.

I can imagine the "parties" to this "tentative agreement" getting together in a room in one of the hotels in the city of Shreveport and discussing how they will carve up the State of Texas. They place a map of Texas upon a table and all gather around, as so many boys at a birthday party, each eager to get a nice slice of the "melon" which was soon to be cut. Of course, Mr. Walter wanted to swallow the entire melon at once, as verified by his supplemental petition filed before the Interstate Commerce Commission on June 18, 1914, but wiser counsel prevailed. I can imagine that the general attorney who represented the railroads around that table, and who is one of the greatest lawyers in the entire country, arose from his chair and said, "Gentlemen, let us go a

little slow in this matter; let us not be too greedy. Texas is a pretty big State, Mr. Walter, about as large as the New England and Middle Atlantic States put together, and if we swallow the entire State of Texas at once, we might become nauseated and lose what we swallow. So let us bite it just half in two." And that is exactly what they attempted to do.

Beginning at Gainesville up in the extreme northern part of Texas, they drew a line down through Fort Worth, Waco, thence via the Brazos River to the Gulf of Mexico, and said to the Interstate Commerce Commission, "this is our 'tentative agreement,' and we will be satisfied if you will prescribe rates for all that part of the State of Texas lying east of that line." As above stated, the Interstate Commerce Commission adopted the "tentative agreement," and basing its second decision in the Shreveport case upon that agreement, undertook to prescribe rates on purely confessedly State traffic in all of that territory lying east of the imaginary line just described.

One-half of the State in population, and far more in traffic, most of its large cities and centers of trade and its greatest and largest ports, were included in that territory designated as "eastern Texas." The Interstate Commerce Commission then said, "Limited to this territory we shall now deal with the relief sought," and then without further ceremony issued its order prescribing the class rates, minimum weights classifications, rules and regulations on purely State traffic in the State of Texas east of that imaginary line, taking away entirely the right of the State of Texas to prescribe rates in that territory. Bear in mind, gentlemen, that the prime object of the Interstate Commerce Commission was to cure a case of discrimination against the city of Shreveport, but oh, what a tangled web of discrimination it wove, when it undertook to prescribe rates for purely State traffic moving wholly within the State of Texas. Thousands of illustrations could be given, but one will suffice. Amarillo, Tex., is west of that line drawn through Gainesville, Fort Worth, and Waco, thence via the Brazos River to the Gulf of Mexico, and therefore was not affected by the supplemental order in the Shreveport case. The rate therefore from Galveston to Amarillo would be the rate prescribed by the Railroad Commission of Texas, which on first class would be 87 cents over a distance of 668.6 miles; while the first-class rate from Galveston to Fort Worth, a distance of only 332.6 miles, under the tariff constructed by the Interstate Commerce Commission would be 98 cents, and Amarillo could then ship back to Beaumont, on an 80-cent rate for first class, while Fort Worth, 336 miles nearer to Beaumont than Amarillo, would be compelled to pay a rate of 98 cents on first class.

So it seems that the Interstate Commerce Commission itself "enlarged" the real issues in the supplemental proceedings which it said that the petitions of intervention of Dallas, Fort Worth, and Texarkana would enlarge, and for this reason were denied. So while the supplemental order of the Interstate Commerce Commission might have cured the alleged discrimination against Shreveport, it produced a thousand cases of discrimination more complicated than the one it sought to remedy.

Mr. BARROW. Would you mind stating in the record whether anybody, party in the Shreveport rate case, was left out of that agreement.

Mr. MAYFIELD. I was not present myself and I can not answer that question definitely.

Mr. WALTER. Your associate, Mr. Williams, was there?

Mr. MAYFIELD. Certainly he was, and so was the chairman of our commission, Allison Mayfield, but they were not "parties" to the "tentative agreement" and took no part whatever in your conference around the table where you decided to swallow only half of our State, and then if that went well to later call for the other half.

The fact that the Texas commission has been wise enough to steer clear of this entire controversy seems to have worried you, Mr. Walter, no little. Certainly you would have been delighted for the Texas commission to have laid its head upon the block and then you let go the ax that would have cut its head off. But far be it from the Texas commission to walk into such a trap.

The Texas commission, Mr. Chairman, has been criticized by certain interests for not having intervened in the Shreveport case. Why should we have intervened—the reasonableness of our rates had not been challenged and our jurisdiction over State rates had never been questioned. But granting for the sake of argument that the reasonableness of the Texas rates had been challenged, the Texas commission would not have undertaken to have established their reasonableness because by law they are *prima facie* reasonable and the burden of overcoming that presumption is upon the party attacking those rates.

Mr. BARROW. But everybody who was a party to the case was in that conference.

Mr. BYARS. All except Fort Worth and Dallas.

Mr. MAYFIELD. Yes; that is true. You made an effort, Mr. Byars, and so did Mr. Maxwell, representing the city of Dallas, to file a plea of intervention, but you were not permitted to do so by the Interstate Commerce Commission, on the ground "that the issues in the case would be enlarged."

The home of our junior Senator, Mr. Sheppard, is at Texarkana, Tex., which is in the extreme northeastern part of our State, and I doubt if Senator Sheppard realized that eastern Texas extended as far north as Gainesville, as far west as Fort Worth, and as far south as the Gulf of Mexico, until he read the supplemental order of the Interstate Commerce Commission in the Shreveport case.

On September 14, 1915, at the request of Mr. Haines, of Galveston, Tex., and Mr. McCormack, of Fort Worth, Tex., the Interstate Commerce Commission suspended its supplemental order until January 13, 1916. Following the suspension of the tariffs and the extension of the supplemental order, the Railroad Commission of the State of Louisiana, realizing that where the supplemental order had cured the case of discrimination against the city of Shreveport, it had created a thousand new cases of discrimination, filed with the Interstate Commerce Commission a new and further complaint, wherein it was asked that the same rate structure as was prescribed in the supplemental order be extended so as to cover the entire State of Texas. This petition was docketed and heard by Commissioner Hall at Houston, Tex., December 15, 1915, at which time hearing was had into the entire Shreveport rate situation. Thus, Mr. Chairman, do we find these distinguished gentlemen forsaking their "tentative agreement" and again asking the Interstate Commerce Commission to prescribe rates for the entire State of Texas. I can imagine another "round table" conference, Mr. Chairman, at which gathered the great rate lawyer, Mr. Walter, of Chicago, the expert rate clerk, Mr. Atkins, of Shreveport, and the learned counsel of the railroads. Can we not hear one of these distinguished gentlemen say, "We made a mistake when we adopted that 'tentative agreement'—it will never stand up, it will never run the gantlet of the courts, because our original complaint before the Interstate Commerce Commission was based on the ground of a discrimination against the city of Shreveport, and while this 'tentative agreement' cures the case of discrimination against the city of Shreveport, it has incubated cases of discrimination by the thousand in the State of Texas. There is only two things that we can do. We must either back entirely off from this case, or we must ask the Interstate Commerce Commission to prescribe rates for the entire State of Texas." Mr. Chairman, they chose to follow the latter course and that is the very reason why the passage of the Sheppard bill becomes an imperative necessity and the tariffs promulgated by State commissions can not be struck down until declared unreasonable by a court having the proper jurisdiction.

Mr. BARROW. That was a new complaint.

Mr. MAYFIELD. That makes no difference, Mr. Barrow. If it were a new complaint, it was only another phase of the Shreveport case. The new petition which you filed asked the Interstate Commerce Commission to wipe out the imaginary line which the "tentative agreement" drew through Gainesville, Fort Worth, Waco, thence via the Brazos River to the Gulf of Mexico, and to prescribe rates for the entire State of Texas, and you introduced at Houston some testimony to show that Shreveport had received a shipment of wool from some little town away over close to Mexico.

Mr. WALTER. Do you mean that was all of the testimony that was offered?

Mr. MAYFIELD. No, sir. I think that you offered testimony to show that a few crates of cabbage were shipped from Brownsville, Tex., to Shreveport, and some testimony was offered with reference to peanut shipments.

Mr. Chairman, I have briefly reviewed the history of the Shreveport rate case, so that this committee could fully understand the necessity of the Sheppard bill. The original complaint filed in the Shreveport case was based solely on the ground of discrimination in rates against that city, but as the case progressed, the issues enlarged at each different stage of the proceedings, until these gentlemen, who sit here in opposition to the Sheppard bill, filed their last petition in which they petitioned the Interstate Commerce Commission to strike down the entire system of the rates of the State of Texas. As I heard this distinguished assistant attorney general of the State of Louisiana plead before Commissioner Hall at Houston, Tex., last December and ask

that the entire system of our State rates, as made by the Texas commission be struck down, and the Interstate Commerce Commission prescribe rates for the whole State of Texas, I wondered what Louisiana's gifted son, Judah P. Benjamin, Attorney General of Jefferson Davis's Cabinet and later counsel of the Queen of England, would say could his voice but speak from the silent tomb. This distinguished gentleman will not deny that he made such a plea.

Mr. BARROW. Yes; I deny it. You point it out in the record.

Mr. MAYFIELD. Go read your last petition. I suppose that it was prepared by Mr. Walter, and although it carried your name and title I must conclude that you have never read it, or you would not now deny your plea.

Mr. BARROW. We are asking for an equalization of rates from Shreveport to Texas points.

Mr. MAYFIELD. Yes; that is true, Mr. Barrow; you are asking for an equalization of rates from Shreveport to Texas points; but how, sir, do you propose to secure that equalization? You propose to secure what you are pleased to call an "equalization of rates" by asking the Interstate Commerce Commission to strike down and to destroy the entire system of State rates on purely State tariffs as promulgated by the Texas commission.

Mr. BARROW. I made no such statement, nor have I ever plead such a statement.

Mr. MAYFIELD. I will leave it to any of these gentlemen who are familiar with the record of this case, if I am not correct.

Mr. BYARS. Yes, sir; you are correct.

Mr. MORGAN. The pleadings are there and there is no doubt but that you have stated them correctly.

Mr. MAYFIELD. The last petition, Mr. Chairman, filed by these gentlemen in the Shreveport case, speaks for itself, and I tell you that the petition which was filed by these gentlemen, who are here opposing the Sheppard bill, asked the Interstate Commerce Commission to prescribe rates for the entire State of Texas, and it ill becomes the learned assistant attorney general of the State of Louisiana to deny or disown his own petition.

It is this last petition, Mr. Chairman, filed by these distinguished gentlemen in the Shreveport rate case that makes the passage of the Sheppard bill an imperative necessity, because in that petition these gentlemen are asking that State regulation of business be done away with. And, gentlemen, when we brush away the cobwebs in this controversy we know that the real issue is whether or not we are going to stand for the abolition of State railroad commissions. There is no use to shy away from this question. We had just as well meet it right now as a little later on. For my part, Mr. Chairman, I am afraid to say to you that I stand for the preservation of the rights of the State to regulate purely State traffic. These gentlemen who oppose the Sheppard measure are here asking that State regulation of business be done away with, while we are here to defend the wisdom of State regulation of business.

Why should we abolish State regulation of business, Mr. Chairman? Has not almost every great reform in this country originated with the States? Did not many of the States of the Union abolish slavery before it was finally abolished in the Nation? Did not many of the States of the Nation enact effective pure-food laws long before the Nation passed any pure-food legislation? Did not a number of the Middle Western States in the early seventies undertake rate regulation long before the Interstate Commerce Commission was created? Go read the history of progressive legislation in this country and you will find, Mr. Chairman, that nearly every great reform has originated with the States. In 1895 Texas, under the stock and bond law, given to us by that great commoner, Gov. Hogg, valued her railroads, and 20 years after Texas had blazed the way we find the Federal Government directing the Interstate Commerce Commission to place a valuation upon the railroad properties in the United States. After having worked upon the proposition since 1913, expending several millions of dollars, the Interstate Commerce Commission had not yet finished its valuation of the Texas Midland Railroad, a short-line road down in Texas, about 150 miles long.

There is a good reason, Mr. Chairman, why reforms have originated with the States. It is because it is much easier to create sentiment in favor of a proposition among a few than it is among the many. A few citizens in a State who agree upon a certain proposition can get together and in a short time create sentiment in favor of their proposition sufficient to carry it to a success in that State, while it would take years of effort to obtain national con-

sideration of the same proposition. The States, Mr. Chairman, constitute what might be called experimental stations for the Nation. For instance, if your State, Nevada, experiments with the passage of a certain law, and it is a success, Colorado will take it up and pass it, Oklahoma will do likewise, and so will other States until finally the Nation adopts it. Now, Mr. Chairman, since history proves that most of the great reforms have originated with the States, I ask, would it be the act of wise men to do away with that which we have gained from experience and which constitutes our principal source of advancement along reform lines?

Had not the different States of the Union experimented with the great reform measures which have come to us in the last generation and found them to be good, do we not know that a great clumsy Nation like ours would be years in adopting these reforms?

I call your attention, Mr. Chairman, to the magnificent record of the States when forced into the courts to defend their decisions. Mr. Clifford Thorne says "the Interstate Commerce Commission has been reserved by the courts on railroad questions as often as all the State commissions put together," and then it must be remembered that the State commissions have been blazing the way.

While it is true that State commissioners have made many mistakes, yet the fact that they were the pioneers in railroad regulation must not be forgotten, and whenever a State commission has made a mistake the railroads have always found an open door to the Federal courts, and as long as that situation remains the railroads have nothing to fear; but if they can escape State regulation they have much to be thankful for. So, Mr. Chairman, I am not surprised to meet the attorney for the railroads here in opposition to the Sheppard bill, because the Sheppard bill seeks to protect the integrity of our State commissions.

It is contended by some, Mr. Chairman, that State and interstate traffic is so closely interwoven that it is difficult to make a division between earnings and operating expenses and values. That is true, Mr. Chairman, and it is one of the very difficult questions yet to be correctly solved; but suppose we abolished State lines altogether and did away with State regulation of our railroads, we would not be relieved of that difficulty. We would still be confronted with the short haul, and there would still have to be made the division between operating expenses and earnings and values. Therefore, it would make no difference whether the Interstate Commerce Commission or a State commission had control over a short haul; the short haul would still remain a complex problem.

The State commissions, Mr. Chairman, understand the demands of local conditions much better than the Interstate Commerce Commission, and it will be a sad day for the shippers and the producers and the consumers of the different States of the Union when they are required to bring their complaints against the railroads to Washington to be submitted to the Interstate Commerce Commission. Never a day passes, Mr. Chairman, but that the Railroad Commission of Texas receives telephone calls and letters by the score asking for adjustment of rates to meet changing conditions, complaints about demurrage, bad service, shortage of cars, overcharges, applications for new depots, etc. Instant attention is given to these matters, and I am glad to say that our commission is fully equipped to handle expeditiously all such matters. Would it be wise, Mr. Chairman, to do away with our State commission and force our people to come to this city, 1,600 miles away, for relief?

Not one of us, Mr. Chairman, is here to contend that a State rate should interfere with interstate commerce. Texas desires, above all things, free intercourse of commerce between all the States. Whenever there is a conflict between a State rate and an interstate rate, the Sheppard bill says that the rate which is the reasonable rate should stand and the unreasonable rate should yield. Can anything be fairer? Let the Supreme Court determine in case of a discrimination which rate is reasonable, and then let the reasonable rate stand. The Sheppard bill provides for nothing more nor less. Its terms are short and easily understood. It simply provides that a State rate can not be struck down until it has been declared unreasonable by a court having the proper jurisdiction. It is true "the Supreme Court has no power of determining the reasonableness of rates already established," but would it not be better, gentlemen of the committee, to amend the Constitution in that respect than to devitalize our dual system of Government by a virtual amendment in another manner?

The last petition in the Shreveport case, signed by this assistant attorney general of Louisiana, calls upon the Interstate Commerce Commission to prescribe rates for the entire State of Texas, which would do away with State regulation altogether. This is a proposition wholly distinct and apart from determining whether or not a State rate discriminates against an interstate rate. It strikes at the very foundation of our form of government. It is the same proposition, though couched in different language, as the plank in the Republican platform recently adopted at Chicago, which boldly declares for absolute abolition of State railroad commissions. It is the siren song of the "new nationalism" to which we have listened during the last few years until we have almost been lulled to sleep in the thought that State lines should be completely wiped out and that the States should surrender to the Federal Government their right to regulate and control even their domestic affairs. I protest against such a change in our governmental policy and assert my faith in the fundamental principles which underlie the fabric of our Republic and upon which it has grown to be the most powerful and influential power in the world. Truly has it been said, "that one of the greatest movements in human history was the American Revolution." The loss of life and treasure in that struggle pales into insignificance compared with the world's great wars, "but the effect of the Revolution upon the political life of the world," says a great historian, "is without a parallel, because its chief result was the birth of our Republic and the creation of the first successful federal government in history." Mr. Ellis, in his history of the United States, speaking of the Philadelphia convention, which gave to us our dual system of government, very graphically describes its powers when he says, "It created without historic precedent a dual form of government. It combined national strength with individual liberty in such a remarkable degree as to attract the world's admiration. Never before in the history of man had a government struck so fine a balance between liberty and union, between State rights and National sovereignty. The world had labored for ages to solve this greatest of all governmental problems, but it has labored in vain. Greece in her mad clamor for liberty had forgotten the need of strength that union brings and her Government crumbled and perished. Rome made the opposite mistake and fostered nationality for its strength until it became a tyrant and strangled the child 'Liberty' to death. It was left for our own revolutionary fathers to join in perpetual wedlock these opposing tendencies as to secure the benefits of both."

The Republican idea of government, Mr. Chairman, was not new and therefore did not differentiate our Government from other governments. There had been Republics before ours was created. It was not the idea of a great empire, because history records that there had been greater, but it was as the historian Ellis says, "The joining in perpetual wedlock of national strength with individual liberty and State rights with national sovereignty." It was as a great student says, "The creation of a government, large and strong enough to assert its independence among the world powers, to compel respect from others, and obedience and order at home, and at the same time provide real tangible local self-government to the various individual sovereigns making up that nation." Such, Mr. Chairman, are the fundamental principles underlying our form of government, which enable the American Republic to expand to the western ocean within a century and to encircle the globe with its beneficent influence.

Now, in the very acme of its prosperity, when other nations of the earth are following in its footsteps, when the world is on fire and the oppressed millions of other lands are looking to the federative principles here established as an asylum against the evils of misrule in their own country, the Republican Party proposes to destroy "the chief feature of the American plan of government," and a Democratic Assistant Attorney General from the Southern State of Louisiana sits here ready to pull down the chief cornerstone of our governmental structure. I plead for the passage of the Sheppard bill. Mr. Chairman, because it seeks to preserve our dual form of Government. I plead for the Sheppard bill, Mr. Chairman, because it does not destroy any of the rights of our National Government, but does go far toward preserving the rights of the States to regulate purely confessedly State commerce.

How the distinguished assistant attorney general from Louisiana can oppose the Sheppard bill is beyond my comprehension, and I want to tell you, Mr. Barrow, that you are sowing to the wind and you will reap the whirlwind. This thing will prove a boomerang to you some day, and you will wish that you had never heard of the Shreveport case. The future historian will record the fact

that it was a Southern State that made the first attempt to destroy the rights of the States to regulate purely State commerce, and that Southern State was Louisiana.

The Interstate Commerce Commission has under consideration this very moment the petition of the Railroad Commission of Louisiana, which, if granted and upheld by the courts of the country, would absolutely destroy the right of any State in the Union to regulate even purely State commerce. What the final outcome will be we do not know. But one thing, Mr. Chairman, we do know is that John H. Reagan, as a United States Senator from Texas, probably had more to do with the creation of the Interstate Commerce Commission than any other Member of the United States Senate; and so jealous was Senator Reagan to safeguard the rights of the States to regulate purely State commerce that he wrote into the very first section of the act creating the Interstate Commerce Commission this provision: "*Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property wholly within one State.*" We know also, Mr. Chairman, that John H. Reagan, as a Senator from Texas, would never for a moment have favored the creation of the Interstate Commerce Commission had he ever dreamed that 30 years later it would be contended that that commission could nullify the rates prescribed by a State commission on confessedly State traffic.

Let us not deceive ourselves in the thought that the Sheppard bill is intended to affect only a local condition in Texas. The dictum in the Shreveport case endangers the rights of all the States and the ultimate destiny of every State in the Union is embraced in the Sheppard bill or a similar measure. The question before you, gentlemen, therefore assumes a magnitude and importance far above welfare of any one State.

Let us not forget that the Federal Government owes its creation to the States. The Federal Government might cease to exist and yet the States continue to exist as before. But not so, Mr. Chairman, with the Federal Government in case of the destruction or annihilation of the States. With the extinction of the States the Federal Government necessarily becomes also extinct. The States may survive the Federal Government and form another, but it can never survive them. What may be called a union may spring from the common ruins, but it would not be the Union of the Constitution. By whatever name it might be called, whether Union, Nation, or Kingdom, it would in reality be nothing but that deformed and hideous monster which rises from the decomposed elements of dead States and which is known by the friends of constitutional liberty as the demon of centralism, absolutism, and despotism.

Let us preserve our dual form of Government, guaranteed under the Constitution of the fathers, which Gladstone said "was the greatest work ever struck off at one time by the mind and purpose of man." Is it not better, Mr. Chairman, to "bear those ills we have than fly to others that we know not of"?

Mr. MAYFIELD. I should like to have the following paper included in the record.

The CHAIRMAN. Without objection, it will be included.

(The paper referred to is here printed in full as follows:)

"No. 3918.

"J. J. MEREDITH, SHELBY TAYLOR, AND HENRY B. SCHREIBER, CONSTITUTING THE RAILROAD COMMISSION OF LOUISIANA,

"v.

"ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

"Submitted January 16, 1912. Decided March 11, 1912.

"The rates from Shreveport, La., to points in eastern Texas are higher than are maintained from Dallas, Houston, and other cities within Texas to such points under substantially similar circumstances and conditions. This complaint attacks the rates from Shreveport as unreasonable and as discriminatory when compared with Texas intrastate rates of the same carriers. *Held:*

"1. That the present class rates out of Shreveport to certain points in Texas on the Texas & Pacific Railway and on the Houston, East & West Texas Railway are unreasonable, and reasonable rates are prescribed for the future.

"2. That the present relation of rates gives an undue preference to the Texas cities in question and effects an unlawful discrimination against Shreveport, and the carriers ordered to cease and desist from charging higher rates upon any

commodity from Shreveport to Dallas or Houston or points intermediate thereto than are contemporaneously charged by them for the carriage of such commodity to equidistant points from Houston or Dallas toward Shreveport.

"3. That if a State by the exercise of its lawful power establishes rates which the interstate carrier makes effective upon State traffic, that carrier does so with the full knowledge that the Federal Government requires it to apply such rates under like conditions upon interstate traffic. To say that an interstate carrier may discriminate against interstate commerce because of the order of a State commission would be to admit that a State may limit and prescribe the flow of commerce between the States.

"4. That section 3 of the act, forbidding undue discrimination in favor of or against any person or locality, applies not only as to two interstate hauls but also as to two hauls, one of which is interstate and the other intrastate, and the fact that the carrier's rates in the latter case are established by a State commission does not relieve the carrier of the paramount duty, which rests upon it irrespective of its obligation to the State, to so adjust its rates that, as to interstate traffic, justice will be done between communities regardless of State lines. The effective exercise of its power affecting interstate commerce makes necessary the assertion of the supreme authority of the National Government, and Congress has appropriately exercised this power in the provisions of the act touching discrimination.

"5. That the provision in section 1 that the act shall not apply to commerce wholly within a State was intended as a recognition of the fact that Congress was not assuming to regulate transportation entirely within the borders of a State and does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a State that would affect unlawfully commerce among the States and thus violate the express prohibition of the act against discrimination affecting interstate commerce.

"6. That the policy of denying to Shreveport similar privileges in the concentration of cotton as are accorded to Texas cities is also discriminatory, and the carriers will be ordered to make applicable at Shreveport whatever lawful practices obtained in this connection at Texas points on defendant's lines under like condition."

STATEMENT OF MR. HAMLIN PALMER, AMARILLO, TEX.

Senator SHEPPARD. Mr. Palmer, you may state your name and business connections to the committee.

MR. PALMER. I am a traffic man, employed by the board of city development at Amarillo. That board of city development is composed of 15 men, appointed by the city commission. Those 15 men are the heads of the various committees; one of them is the traffic committee, another the agricultural committee, another the publicity, and so on. Those heads of committees have other citizens appointed as members of their committees, so that we use a great many business men in the town in the work of the board.

I represent that body of men, and have been sent here to Washington for the purpose of urging the passage of this bill. I represent the business men in Amarillo, the financial men of Amarillo, and the agricultural interests in the surrounding country, because I know their sentiments along that line.

We look upon the Railroad Commission of Texas as the greatest force in the country for the development of the country, and we want to see its powers preserved.

There are a great many things that I had in mind to say in regard to rate making and the forces that were at war in that matter, but that has been entirely covered.

The purpose for which I have been sent here to-day is to present to you the opinions and desires in the matter of this hearing of an organized body of business men duly authorized to represent the commercial and industrial interests of the city of Amarillo, Tex. (population 18,000), and by reason of universal opinion qualified to speak for the entire citizenship of the Great Panhandle and Plains Country of Texas, comprising an area of 40,000 square miles, with a population of more than 200,000.

Natural conditions more than State lines have determined the name and the peculiar conditions which have distinguished this territory. Made known first to the world as the desert of the "Great Staked Plains," later famous as the location of the greatest cattle ranges of the world, it has now become recognized as the most favorable stock farming region in the Southwest, immigration is fast converting its vast expanse into one great farm, and its commercial im-

portance has grown magically into giant form in one night. These are the conditions that give us warrant for joining in the voice of our great State in protest against encroachment and in asking for protection of those institutions which have made us great and prosperous.

We are not concerned in this instance with the efficacy of any political principle, but in the methods of conducting one of the great branches of the business of the country which has directly to do with the success of practically every other branch of business. Transportation in the great arteries of commerce between the States regulated by the interstate-commerce act is amply provided for in its control by the Interstate Commerce Commission; but in the remote extremities of trade, where the great pulsating central force has long since expired, local vital forces control the final circulation, maintaining the health and strength of the ultimate units of business which constitute the commercial and industrial entity of the Nation. In the regulation of these remote forces are to be found the natural reasons for the establishment of the ganglionic centers constituted in the State railroad and corporation commissions, and through them there is returned to the great central control a constant renewal of the constitutional vitality that animates the whole.

The Texas Railroad Commission was in existence as an active and efficient body long before the Interstate Commerce Commission had developed its present adequacy of control and regulation. It had corrected hundreds of discriminations and abuses in the transportation methods of the carriers and had eliminated them from practice within the State for years while these same practices were going on in interstate traffic, although now removed. It was formulating many methods in the regulation of transportation and practices in procedure which have since been adopted in interstate regulation. It fought out all the original battles with the corporations and established many precedents which have gained universal recognition. In the beginning, shortly after its establishment, its constitutionality was attacked by the railroads, but in the end it was recognized by a decision of the Supreme Court as a constitutional entity lawfully established and with lawful powers; and it is for the preservation of this lawfully constituted body and its lawful powers that we are now asking your favorable consideration.

During the life of the Railroad Commission of Texas the State has grown in population from about 2,000,000 to over 4,000,000, and in all its vast expanse of 265,900 square miles its development in all lines of industry and commerce has largely and continuously advanced, spreading out from its centers to the remotest corners of its territories. In this development the commission has been one of the most important factors, and because this development is but just begun the preservation of the functions of the commission is of paramount interest. The commission is a controlling and regulating body accessible to individuals and communities, where conflicting interests may be reconciled and local needs receive attention, and such an immediate accessible regulating body only can grant or impose the conditions under which any locality, community, section, territory, or other unit of the commercial life of the country may proceed uniformly, equitably, justly, and speedily to the accomplishment of its manifest destiny of prosperity. The history of the Railroad Commission of Texas has exemplified this completely. It has protected the people from the exactions and encroachments of corporations and placed them in position to retain for themselves a just share of the fruits of their industry, and while the railroads still hold over us the recourse to injunction and the processes of the courts, they can yet be made to admit that the offices of the commission have in a great measure saved them from themselves in the abolition of ruinous competition and from usages and practices that were a drain upon them and put their business on a permanent and profitable basis. If they should claim that the actions of the railroad commission have always been hostile to the railroads, there is ample testimony to the fact that the commission has universally recognized the theories evolved by the lines themselves in the construction of freight rates and the practices in the handling of traffic established by the carriers, and within the last year they have been granted substantial increases in almost all schedules of rates, with practically unanimous consent of the people.

If the determination of rates of freight rested upon a theory based upon so much per ton per mile, this function of a State commission might become of little local importance and rate making might be relegated solely to the carriers under a general statute, and there would be little use for either State commissions or an interstate commission; but the numerous elemental considerations

which have been recognized by both State and interstate commissions and by the statutes should cause any legislative body to consider long and carefully the practicability of placing this function in the hands of one central body simply on the plea of uniformity and with only the remotest possibility of such result being obtained. The tendency of the operations of the Interstate Commerce Commission and of the decisions of the Supreme Court in this direction has been the occasion of this bill which you are considering, and, as we understand it, its object is to make plain and specific the general understanding of the people as to the functions of the Interstate Commerce Commission. It is for you to decide whether the manifest desire of the people as to the jurisdiction of the Interstate Commerce Commission shall be continued or whether it shall go the way of many other salutary measures to execution by mere inference or interpretation.

We favor this bill because we believe in the preservation of the powers and functions of our Railroad Commission, which has built up our country wisely, and therefore permanently, and has imparted health and stability to our transportation and commercial interests, with due and just regard for every corporation, individual, and community, and because more than any other force it has contributed to the development of our State and its resources.

In presenting this statement to you I do so as the authorized representative of the board of city development, which organization is empowered to speak for all the varied business interests of the city of Amarillo, and in this instance is the mouthpiece of the commercial, financial, agricultural, and industrial interests of the entire Panhandle district of the State of Texas, and this is their prayer and petition.

Mr. SHAUGHNESSY. Mr. Chairman, I ask that the testimony of Mr. William M. Gardiner, president of the Reno Commercial Club, given before the Newlands committee at San Francisco last November, be introduced and made a part of the record at this point. This will conclude the testimony which I have to offer at this time. In closing, I desire to refer to the testimony which was taken by the Newlands committee on this long-and-short haul question at San Francisco and Washington last fall, and I wish especially to refer the members of this committee to the exceedingly comprehensive and illuminating cross-examination of Mr. Seth Mann, of San Francisco, by different members of the Newlands committee.

STATEMENT OF WILLIAM M. GARDINER.

Mr. GARDINER. I appreciate the courtesy the committee has afforded me in granting me this opportunity to appear before it and express my views.

I represent, primarily, the Reno Commercial Club, of which I am vice president, and, by special request, the Merchants' Association of Lovelock, and I also think I may take it upon myself to say I represent the State of Nevada generally, because I believe there is a unified public opinion throughout the entire State on the subject which I am about to present and the views I am going to mention on the subject.

The Railroad Commission of Nevada has been making the fight of the people of Nevada, and the railroad commission will be here later and will present this matter in an entirely different manner and with a great deal more knowledge of the subject and more ability than I can command, but it was thought desirable that there should be at least one representative of the common people of Nevada. The only distinction which I can claim, if any, is that I am a Nevadan by adoption—I am afraid my California friends when they know I am a Californian by birth will think I am a renegade

before listening to me very long—I am a Nevadan by adoption and a Democrat by inheritance, and, later on, a Democrat by conviction.

When I went to Nevada eight years ago, I found in progress there the fight of the people of Nevada for better railroad rates—for railroad rates which were not discriminatory. I found that that fight had been in existence for years and that same fight is going on now. What I am saying to you gentlemen and am going to say is simply one gun in that fight, and if that gun does make a great deal of noise, remember that the final battle is on now, and that this is only the first gun in a battle, and the first gun in a battle does not count for much. The fight is on, and we are just beginning to fight. I may say, we have just begun to fight.

The railroad people started out, so far as I can see, in the determination of railroad rates in Nevada, by charging all that the traffic would bear. I have been unable in my study—and I am sure that the railroad commission will bear me out in saying in their studies, and say that they also have been unable—to find any other logical basis. It is true that there is an excuse—not a reason—that has been given by the railroads and that excuse is, water competition, that the towns on the seaboard, by reason of having communication with the East by water, are entitled to lower and less remunerative rates to the railroads than are the intermediate points, I might say, than the intermountain country.

In the old days, the intermediate rate was made of the terminal rate to the coast—that is, on shipments from the coast—made on the terminal rate to the coast plus the local back to the intermediate point, and there arose that famous back-haul charge which has been the subject of more controversy in connection with railroad rate making than anything else that I know anything about, and I want to say now, in my opinion, that back-haul charge is arbitrary, vicious, unprincipled, and indefensible, and I think an investigation of it will bear that out. It is true that that back-haul charge, as such, has been to some extent eliminated, and it is true that in a great many particulars the rate now in Nevada is somewhat less than the coast trade plus the back haul back, but still it is high enough to prevent our doing legitimate business.

Some time ago in Nevada there was a conversation between a railroad man and a Nevadan and the Nevada man was talking about these discriminatory rates from which we suffer, and the railroad man began to talk about water competition. It was not long before he was driven into a corner on that, as the railroads have been driven in a corner wherever they have urged that, and even before the Interstate Commerce Commission, and then the railroad man went on to tell how the railroad was a bridge from the Atlantic to the Pacific; it was built for the purpose of connecting the Atlantic and the Pacific, and that the Pacific was entitled to a better proposition than the intermediate points along that bridge, and again the Nevada man drove him into a corner and finally the railroad man said: "What are you going to do about it?" And that, gentlemen, has been the position and defense of the railroad companies right along to the discriminatory rates which are charged Nevada. In addition to these discriminatory rates on shipments from the east into this intermountain country, there is also a discriminatory rate

on shipments from these terminal points eastward into our country. The rates from these terminal points are so little in excess of the rates which are charged for shipments out of Reno, for instance, or out of Spokane, for instance, or some of these other cities, that it makes it practically impossible for any business to be done in a distributing way by any of these intermountain towns. I am going to give just one instance, taken at random, which is borne out by practically all the different commodities, subject to railroad transportation. Take one concrete illustration—nails.

The rate on nails from Pittsburgh to San Francisco, with an 80,000-pound minimum, is 75 cents, and the rate on nails from Pittsburgh to Reno, on the same minimum, is \$1—33½ per cent higher than the rate to San Francisco. The rate to Reno on nails, with a 40,000-pound minimum—and that is more like the minimum which jobbers in that community, if there were any jobbers, would be likely to need—with a 40,000-pound minimum the rate is \$1.17.

Mr. SIMS. Where is that last rate from?

Mr. GARDINER. From Pittsburgh to Reno, with a 40,000-pound minimum. I forget what the rate from Pittsburgh to San Francisco on a 40,000-pound minimum is, but San Francisco can well take the 80,000-pound minimum. The rate on the 80,000-pound minimum from Pittsburgh to San Francisco is 75 cents.

That is fair enough, but the rate from San Francisco to Winnemucca or Elko on less-than-carload lots of nails is 77 cents; the rate from San Francisco to Reno is 69; the rate from Reno to Winnemucca is 56 cents, and from Reno to Elko is 69 cents. Without bearing those in mind and simply taking the results, San Francisco on that kind of basis can put nails in Winnemucca at 4 cents less than Reno can and into Elko at 17 cents less. You understand that Winnemucca and Elko are points on the Southern Pacific Railroad east of Reno. If San Francisco buys in 80,000-pound lots and we in 40,000-pound lots, then San Francisco can put goods into Winnemucca 21 cents better than we can, and into Elko at 34 cents better.

Look at the geography of the situation a moment. San Francisco is 244 miles from Reno. On the western haul, coming from Reno, there is a summit of 2,500 feet to climb. On the eastern trip going to Reno there is a summit of 7,000 feet to climb. Going from Reno to Elko there is only a summit of 589 feet to climb. Notwithstanding that, the haul from San Francisco to Elko, going over that 7,000-foot summit, is only 8 cents more than the rate charged from Reno to Elko. The rate from San Francisco to Reno, as I said, is 59 cents. Figured any way a person can figure it, I do not see anything except indefensible discrimination. If the haul from San Francisco to Elko is broken at Reno—that is, if a Reno man orders goods from San Francisco and ships to Elko—the rate that must be paid is \$1.28 on that broken haul from San Francisco to Elko. If the shipment is made from San Francisco direct to Elko it is 77 cents. Gentlemen, if the rate from Reno to Elko is fair, why, then, on the shipments from San Francisco to Elko is San Francisco charged only 8 cents for the haul from San Francisco to Reno with the 7,000-foot summit to cross? That is a haul nearly as far as the haul from Reno to Elko and with a climb twelve times higher than the climb from Reno to Elko. Gentlemen, what is the reason for that? What is the rea-

son for those rates? Do they spell anything except discrimination? In my opinion there is just one answer to that—one answer to these rates—and that is that they are intentionally discriminatory for the purpose of favoring the coast jobbers and for the purpose of making it impossible for any point in Nevada to do any kind of a jobbing business.

It would not be so bad, gentlemen, if the transcontinental rate from the East to Reno were higher than the rate to San Francisco, but they are not satisfied with that. They make then a rate from San Francisco to our natural territory, the effect of which is lower than the rates from Reno out.

If we take the transcontinental rates, or the rate San Francisco is given, we can not do business. If they charged San Francisco on rates into our territory any reasonable sum, anything to give us a fair chance, then the situation would not be so bad, but, gentlemen, they take us and grind us between the upper and nether millstone, and they make it impossible for us to do business, and that is the complaint we have now. The seaboard rate and eastward rate are combined simply for the purpose of discrimination and for the purpose of making it practically impossible to do business.

I have been talking about Reno. Reno, gentlemen, I speak of because I know more about it. The same situation exists all through the State of Nevada and exists through the indulgence of the Interstate Commerce Commission which has not, up to the present time, seen fit to put effective relief rates into operation.

While I am talking for Reno, I do not mean you, gentlemen, to gather for a minute that I want these rates so rectified that Reno alone, in Nevada, will become a jobbing center; that Reno alone will have to pay these lower rates. What I believe is that that whole scheme of a higher charge for a short haul than for a long haul is wrong, and if the rates are rectified and if it makes it possible for Elko, Winnemucca, Ely, and Tonopah, and other towns all to become jobbing centers and work in competition with Reno, it is all right. We are not, in Reno, taking any dog-in-the-manger position. Our position is that commercial club is that we are working, not for the upbuilding of Reno, but for the upbuilding of the State of Nevada. We will get our part when Nevada is built up, but we do not hold any dog-in-the-manger attitude. We do not ask that the rates be so adjusted that some certain communities will be given the opportunity to do all the jobbing business through the entire territory. That is not our position. It will be the position of some people who will talk to you later on.

MR. SIMS. I want to ask if I got your rate right—the rate from Pittsburgh to San Francisco—

MR. GARDINER. I will answer that question, sir, but I want to say that you will find that illustration completely worked out in this little booklet, of which I have some copies here. Probably that would be the best answer I could give. Would you like to have me answer your question now, notwithstanding?

MR. SIMS. No; this will be satisfactory.

MR. GARDINER. I want to pause to make some explanations. In speaking of these coast cities—and naturally I mean San Francisco more than anything else when I speak of these rates—I do not want

to be unjust nor unfair to San Francisco. I fought the fire with these San Franciscans and fought all the way through it. I was here at that time. I like San Francisco; I rejoice in the way San Francisco has risen from the ashes, but, gentlemen, I do not believe that the attitude of the commercial bodies and big jobbers of San Francisco in asking that those discriminatory rates against the intermountain communities be maintained is the big western attitude or the true attitude of San Francisco and the people. I believe that the people of San Francisco are bigger and better and fairer minded than to ask that they be so favored as to be given the entire Pacific coast business. That is what you are going to be asked by the commercial bodies. They ask that we be discriminated against so that we can not do any business, in order that they may ship into our territory.

Some one may say that it is unfair to disturb conditions which have been built up by reason of these discriminatory rates and that San Francisco has invested large capital in the jobbing business, and that they have their ramifications all through this intermountain country, and that if the rates are changed they will not be able to do business in the same fashion; that the capital can not be utilized in the same way, and because these conditions have existed for years and years and years they ought not to be changed.

Gentlemen, that is the old line of least resistance. "Leave well enough alone, gentlemen; do not disturb things; we have been getting along for years and years, and then some more; we have had no trouble; you are busy with the war. Let this go. You are busy with big things and do not bother yourself with little things like this. Let us alone." That is the talk you will hear; but, gentlemen, I want to say one thing. It is never too late to right a wrong; it is never too late to see that justice is done, and any business which has been built up, any capital which has been accumulated for the purpose of discrimination or of utilizing discrimination for the purpose of doing injustice, is not entitled to any consideration at all. The trusts made the same kind of an argument as that. They said, "We have been getting along all right; we are developing the country; we are distributing the goods; leave us alone." But the antitrust law was passed; and why? Because the utilization of large capital in that particular fashion was held to be inimical to the public good; and I say that the utilization of the capital of these people, utilized by reason of these discriminatory rates, preventing the intermountain country from doing business, is all wrong, and that no consideration should be shown to capital which is exercised and used in that particular sort of fashion.

We control trusts because we consider that they are vicious and undemocratic. Is it not vicious and undemocratic, gentlemen, to give certain particular towns a monopoly of the jobbing business, and to do it through railroad rates continued in force by the Interstate Commerce Commission, even though it has been shown time and time again that they are iniquitous and unjust? What we have, when we come to a final analysis, throughout this western country, is a jobbing trust which is maintained by permission of the Interstate Commerce Commission; and we say, gentlemen, that it is time for Congress to dissolve this jobbing trust.

Gentlemen, I also want to explain that I am not against the railroads. No one, I think, can appreciate any more strongly than I

can the truth of the statements which Senator Newlands has been making from time to time in public that railroad companies at the present time deserve consideration. The railroad companies do deserve consideration. Whatever we have in the West we owe to the railroad companies, and now, when the transportation facilities are short and the demands upon them by reason of the war are very great indeed, and when they are clamoring for more cars and locomotives and need more rolling stock the sympathy of the people ought to be with them; and my sympathy is with the railroad companies, gentlemen, and I say to you, right now, that if it should be necessary in order to help us win this war—if it should be necessary in order to equip the railroad companies with new tracks and new rolling stock and whatever else they need—if it should be necessary to double the transcontinental rates, the intermountain country, as far as I know, would cheerfully pay those double rates, provided all discrimination is taken away. It is the discrimination that we are talking about and fighting.

If we are called on to pay double rates and San Francisco pays double rates, and the rest of the terminal towns pay double rates, we will pay them and will not complain, but we do complain about paying greater rates than the terminal rates, when the haul is so much easier and where the principle underlying them will not bear analysis. We do object to San Francisco being given a lower rate into Nevada, which is an infinitely greater haul than the haul from Reno into the various Nevada points. We are not antirailroad. We are in sympathy with them. A great many of the railroad people are my friends, and I want them to continue to be my friends. I am not talking against the railroads, but I do say, and I say it now, and without going into details I say it, that the people of Nevada are prepared to use every club against the railroads which they can avail themselves of until these discriminatory rates are by and after the discriminatory rates are by we will cooperate with the railroads in every particular to build up all the country, but we do say that neither the railroads nor the coast cities have any right by reason of discriminatory rates to keep the people of that intermountain country.

We have about a third to 25 per cent of the area of the whole United States and everybody knows that that area has been kept back in its growth, in its population, in its commercial growth, and everybody who wants to analyze it down will find it has been kept back by reason of a discriminatory intention to keep it back, participated in by the railroads and their friends at these terminals.

I want further to explain, gentlemen, as you have probably gathered, that our only fight is an ironclad long-and-short-haul bill.

When it was up before in Congress, there was some doubt expressed as to whether or not it was constitutional, and because there was some doubt expressed then there was an amendment interjected into the bill by which the Interstate Commerce Commission was given permission, in special cases, after a hearing, to allow a greater charge by the railroad companies, and that is the bill which was finally passed. We have had no relief whatever from it. We are willing to take our chances on the constitutionality of an ironclad long-and-short-haul clause. We have appealed to the Interstate Commerce Commission long enough and now appeal to Congress for

something definite and something final which will forever destroy that situation.

Now, gentlemen, the only excuse we have ever heard offered by the railroad companies for charging more for a short haul than for a long haul—an excuse and not a reason—has been tidewater competition.

An element which properly enters into consideration, but has never been made public, is that the railroads consider it is their inalienable right to charge all the traffic will bear. I believe that has a great deal to do with it, but that is kept sub rosa—nothing said about it. The real reason which is given is tidewater competition. Gentlemen, water competition against the railroads on shipments from the Atlantic to the Pacific has always been negligible. The Interstate Commerce Commission has repeatedly been forced to find that it was negligible, and in one case found it did not exist at all, and in one case the railroad companies were even forced to admit that never, at any time, have the water rates been taken into consideration by the railroad companies in fixing their transcontinental rates.

Therefore, we have a practically negligible proposition, and when we come right down to it, we find that these rates are merely the granting of a special privilege to a certain special class. The days of special privilege, gentlemen, have passed, and if not entirely passed, are rapidly drawing to their close, and we believe that when this long-and-short-haul bill has finally been put through in its absolute form, that the days of special privileges will be closed entirely.

Now, again, about this water competition. At the time when the back-haul situation was at its halcyon days, I am informed—and what I am about to say I know not of my own knowledge, but it has been told me by a former secretary of the Santa Rosa Chamber of Commerce, and it is substantially true; I may be in error on some figures—but at the time that back haul was in its halcyon days, at the time they were claiming the right to charge the back haul on account of water competition, gentlemen, there were 167 cities and towns, I am informed, in the State of California, all of which were enjoying terminal rates, but not more than a dozen of them were on deep water, by special favor of some kind of the Southern Pacific, which had granted those 167 cities terminal rates when there was no water competition at all in competition with them.

Santa Rosa was not one of those cities granted terminal rates and it protested, claiming San Francisco was discriminated in favor of and against them, and appealed to the Interstate Commerce Commission and the Interstate Commerce Commission found there was discrimination and the Interstate Commerce Commission said to the railway company, "You must not discriminate against Santa Rosa. Either you must give Santa Rosa terminal rates or take the terminal rates away from all the cities not on deep water." Naturally, the railroad company took the terminal rates from all the cities not on deep water, and they must all pay now somewhat higher rates. But the point of it was when they were taxing Nevada that back haul, there were 167 cities in California in the same situation getting terminal rates. Does not that situation prove that from the beginning of affairs transcontinental rates were sufficiently remunerative to the

Southern Pacific Co., but by some kind of a blind between the Southern Pacific Co. and the jobbers of this part of the country those rates into Nevada and other intermountain States had been kept up. It seems to me it can spell nothing else in that situation. If the transcontinental rates had been brought down by water competition, for what reason under the sun were the 167 other cities in the State of California in the same category as Reno given terminal rates? Does it not prove that the transcontinental rate was reasonable? Does it not prove that it gave the railroad companies adequate compensation?

Gentlemen, if water competition, the excuse offered by the railroad companies, ever does arise; if there ever comes a time when water competition does exist against the railroad companies, then, if the principles which the railroad companies insist upon are applied to rate making, what will be the result? The result will be that the water rates will be lower than the transcontinental rates are at the present time, and that the railroad companies will claim the right to make their terminal rates as low or lower than the water rates, and to raise the intermountain rates correspondingly higher, and as the water rates go lower they will claim the right to increase and again increase the intermountain rates. That is the principle of the thing in the last analysis—tax the intermountain country to enable the railroad companies to stifle water competition. That is the result of being allowed to charge a greater rate for the short haul than for the long haul; give the coast people lower and continually lower rates as water competition increases and squeezes the mountaineers. The poor mountaineers in this situation are like the common people made famous in Homer Davenport's cartoons in the press when he was cartooning the trusts. Of course, raise railroad rates to the mountaineers and lower them to the coast, and if water competition comes along, it will be necessary to apply to the Interstate Commerce Commission to get the right to raise those rates, but if you will read the dealings of the Interstate Commerce Commission with these railroads, you will see that the railroads will not have much trouble in getting the right to make further discriminatory rates, if water competition exists, because the Interstate Commerce Commission has taken up, in a very serious fashion, this question of water competition, and discussed it from one side to another, but if they come out and find the facts they will find water competition has never been anything at all that was taken into consideration in the fixing of rates.

But, is water competition a fair element to take into consideration, even if it should exist, as far as the intermountain rates are concerned? Why was the canal built? Was the canal built to work a hardship upon the people of the intermountain country? Was it built to work a hardship upon any people in this country? I say most emphatically, no. The Government must have built that canal, because, aside from war purposes, it believed that there were certain commodities which could be hauled more properly from the Atlantic coast to the Pacific coast by water than rail; because it knew that the railroads were congested, and because it knew they had more than they could take care of, and they knew that if certain commodities were to be allowed to be shipped by water the people of the Nation could get these commodities at a less rate, and that it would undoubtedly dis-

turb the railroad companies. Now, whenever that canal is in shape, and whenever the shipping is in shape so that it can be utilized to go through the canal, are the railroads to be allowed to decrease their continental rates so as to stifle and shut off water competition? If that is the case, then for heaven's sake, gentlemen, why was the canal built? It was built to give lower rates, and if the railroads are to be allowed to give lower rates in competition with it and shut off the water competition and charge us in the intermountain country more to make up for that, what kind of business is the Government in? It has taken our money in the intermountain country as well as other money to build the canal, and the whole effect is going to be, ultimately, to increase our taxes by reason of increased charges in freight, if the principle laid down by the Interstate Commerce Commission is something that is to be allowed to continue to exist.

Gentlemen, if you think I have misquoted the Interstate Commerce Commission, then read the opinion of the Interstate Commerce Commission rendered on June 30, on these intermountain questions, and ask yourself, is the Interstate Commerce Commission going to be permitted to frustrate the purpose of the Government in building this canal?

Mr. SIMS. What case is that you refer to?

Mr. GARDINER. That is the intermountain cases.

Mr. SIMS. The decision was rendered June 30, of this year?

Mr. GARDINER. Yes, sir; I have it here. It is the opinion on the reopening of the fourth section, application 205, etc., on transcontinental rates. It is the opinion of June 30.

Mr. GARDINER. I am going to have something more to say about this Interstate Commerce Commission in a few minutes, but this thought occurs to me: What I am going to try to bring out is that the Interstate Commerce Commission has entirely abused its powers. The Commerce Court some time ago abused its power, and Congress was appealed to and the Commerce Court ceased to exist.

A close analysis of the attitude of the Interstate Commerce Commission will show you, gentlemen, that it has abused its powers, and we ask that its powers, so far as the long and short clause is concerned, be made to cease to exist by reason of a proper amendment to the interstate-commerce act, the fourth section, taking away all discretion in such matters from the Interstate Commerce Commission.

I want to read one thing here. I want to show to what extent the defenders of this discrimination have been driven in trying to get these rates continued in existence. On page 252 of this opinion, which I have quoted to you, the Interstate Commerce Commission repeats an argument which is made probably by the coast jobbers. It says:

It is urged that the shipbuilding industry on the Pacific coast is in large part new. Its great development within the last year is due to extraordinary conditions, as the result of which merchant ships command a price from three to five times as great as could have been secured for similar ships two or three years ago. It is urged that this industry at this time is not able to stand material increases in these iron and steel rates. Other industries of smaller magnitude but of importance and value showed how their interests in some instances would be jeopardized by any substantial increases in these coast rates.

Our position before the commission was that nobody should be charged any more than the terminal rates on the coast, and the posi-

tion was that if it was necessary to raise the Pacific coast rates in order to equalize, that is perfectly proper, but Nevada does not want to pay any more than the terminal rates, and in opposition to that these coast jobbers say here: "If we have to pay any more, we are going to be hurt." They are perfectly willing to feather their own nests on this discriminatory rate making and perfectly willing to do an injustice to the people of Nevada, but they say: "For Heaven's sake do not hurt us. You have hurt Nevada, Utah, Arizona, New Mexico, eastern Washington, and all the intermountain country all these years and given us an advantage in this discrimination and have been doing everything you could to keep back these intermountain communities, to throttle their prosperity and diminish their population; you have been doing all that you could in that direction, but for Heaven's sake do not make us pay any more. Hurt them and continue to hurt them all you want to, but leave us alone on the coast. We have gotten fat on our rates; do not bring about any diminution of our prosperity." That is the kind of argument you find urged against equal rates. You do not find anything logical or anything persuasive, but you simply find, "Do not disturb us; leave us alone; let conditions be as they are at the present time."

Now, when this opinion was delivered—it was never put into effect—we thought we had something coming our way. We thought we had approximately the relief we were entitled to, because the commission had ruled that there was no real reason why the intermountain country should be charged any more than coast terminals, and had ordered the railroad companies to file schedules leveling their rates. If they wanted to lower the Nevada rate to correspond to the San Francisco rate, it was all right, and if they had to raise the San Francisco rate to make it sufficiently remunerative, and lower the Nevada rate, it was all right, but the rates had to be leveled, and the railroads came to the Interstate Commerce Commission and said, "You have overlooked something; Congress recently passed a law saying we could not raise rates without a hearing by your commission and investigation of each particular commodity upon which it is proposed to raise the rates."

Have I stated that correctly?

Mr. BARTINE. It does not state particular commodities. The law is general, but it says that no rates shall be raised without the approval of the commission.

Mr. GARDINER. Without an investigation.

Mr. BARTINE. It does not say "without an investigation." It says the Interstate Commerce Commission may do it without an investigation.

Mr. GARDINER. Anyway, the ruling of the Interstate Commerce Commission was: "It is very true you will have to come before us and file new schedules, and we will have to go into this matter very thoroughly, and in the meanwhile our whole opinion and order of June 30 will be suspended." Gentlemen, if the Interstate Commerce Commission had said to the railroads, "You have been discriminating against the people of Nevada for years and years and years; you have been charging them excessive rates; your own rates to the coast were remunerative, and we have found that out; level your prices by charging Nevada the terminal rates and no higher than the terminal rates, and then take time to compile your new schedules," you

would have found the railroads running like a band of wild coyotes to get their schedules on file with the commission and having them approved. What was done? Nothing at all. The order was suspended, and we do not know for how long it will be suspended. Why was there not a ruling which would level the rates by making the Nevada rates the same as the terminal rates, when this matter was brought to their attention, and then permit the railroads to file schedules to take care of that? The Interstate Commerce Commission could say, "We can take care of you, but we are going to stop once for all this iniquitous practice of charging exorbitant rates to the people of the intermountain country. Did they do that? No. They said, 'We will give the railroads all the time they want, continuing the old iniquitous rates in effect at the same time.'"

Now, gentlemen, in 1910—let me go back a little further than that. I do not know when the fight for a change in these rates started before the Interstate Commerce Commission, but I imagine that it was about 10 years ago. Ten years have gone by and we have not yet received from the Interstate Commerce Commission the relief which we are entitled to. In 1910, Congress passed this amended fourth section of the interstate-commerce act, and it provides, "That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act; but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance."

Now, here is an amendment, a proviso—

Provided, however. That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided, further.* That no rates or charges lawfully existing at the time of the passage of this amendatory act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.

Now, gentlemen, Congress does not indulge in useless, senseless legislation. I suppose that when Congress passes a remedial statute it intends it to afford some remedy within some reasonable time. That amendment was passed in 1910, and the people of Nevada, to this day, have had no relief under it and have had no relief by reason of the tactics of the Interstate Commerce Commission. Now, gentlemen, it was not contemplated in the proviso that in exceptional cases there shall be no greater charge for a short haul than a longer, but it even says that they can not charge any greater compensation as a through route rate than the aggregate of the intermediate rates, subject to the provisions of this act.

I told you a while ago that the aggregate of the rates from San Francisco to Reno, and from Reno to Elco amounted to \$1.18. I think it was, and that the rate from San Francisco to Elco was 77 cents, and that has been in operation all this time. That same condition has been in operation to all points in the intermountain country on the eastward haul. There have been westward hauls, where, notwithstanding the statute, the railroads have charged more to the intermediate points than to the coast points.

The VICE CHAIRMAN. You say there has been no rearrangement of the rates in this section of the country since the passage of the act in 1910?

Mr. GARDINER. Yes, sir; a slight lowering of the rates under a decision which took place in 1914.

The VICE CHAIRMAN. I think, in the southeastern division, in relation to the South Atlantic States there has been such a rearrangement, and, in a great many cases, satisfactorily. Is not that true, Mr. Thom?

Mr. THOM. Yes, sir; and I understand, further, that Judge Bartine has filed a report showing that millions of dollars have been saved in this western country.

The VICE CHAIRMAN. I ran for Congress in 1896 on this very proposition, because we had been outraged, but subsequently, I think, satisfaction has been given in a great many cases in our country.

Mr. GARDINER. If that state of affairs has been perfected in your country, I wish to shake hands with you and congratulate you at the end of this hearing.

The VICE CHAIRMAN. It has not been perfected; but something has been done in that direction. I do not want to go that far.

Mr. GARDINER. We have been benefited, and have been able to do some business; we have secured some reductions.

Mr. BARTINE. That was before the act?

Mr. GARDINER. We have been benefited by some reductions which have been given us. Those reductions were given us by the opinion filed by Commissioner Lane when he was on the Interstate Commerce Commission, and that helped some; but I do say that this long-and-short-haul amendment—the amended fourth section—has never been to this day put in operation by the Interstate Commerce Commission.

The VICE CHAIRMAN. In order that I may not be misunderstood, I want to amend my statement by saying, in justice to the railroads, with their customary thrift, that they did not lose anything in the aggregate in these revisions in my country; that while the slighted towns have had their rates reduced, I regret to say that the larger points—the basic points—have kicked like red steers, because the railroads have not only recouped by making good their losses on them, but have redoubled their losses and in the aggregate have made money.

Mr. GARDINER. There are some commercial centers in this country that will do some of that red steer kicking, and you will probably hear something of it before you get through with these hearings.

The VICE CHAIRMAN. You do not kick on railroads making the terminal points rates larger in order to relieve your section?

Mr. GARDINER. That is the point. I do not want to take a position that is unfair to the railroad companies. They have taken a position that is unfair to us for years. I have almost lost all feeling

of charity for the railroads, but I have some of it left, and I know, at the present time the railroads are deserving of consideration from us. I know they have to have more revenue. I know they have to pay more for their steel and cars and employees, and all of those things are going up all the time. I do not believe that if these people make an application to the Interstate Commerce Commission for an advance they will be refused. I believe, myself, that the Interstate Commerce Commission at the present time should be devoting nearly all its time to a discussion of this particular question, when their expenses are doubling and trebling—perhaps that is overexaggerating it—but while they are climbing at an alarming percentage they need higher rates, and higher rates should be given them.

Mr. SIMS. Your contention is, as far as I have gathered it, that as far as the intermountain country is concerned, the Interstate Commerce Commission has made the exceptions permitted under the law the general rule instead of exceptional cases?

Mr. GARDINER. Yes, sir.

Mr. SIMS. They have been applying exceptions to the whole country and consequently the law has not been applied in letter and spirit?

Mr. GARDINER. Exactly.

Mr. SIMS. I wanted to see if that was your contention.

Mr. GARDINER. Yes, sir.

Mr. SIMS. And for this you hold the Commission responsible?

Mr. GARDINER. Yes, sir.

Mr. SIMS. In other words, it has exercised its discretion?

Mr. GARDINER. Yes, sir; when the amended fourth section was passed the railroad companies went to the Commission and they said, in effect, "Here we contend that in every place where we have been charging a greater rate for a short haul than for a long haul, that is an exceptional case; a special case."

The VICE CHAIRMAN. They did file applications in each special case to allow the exception in each case, and then the Commission directed that they should file amended schedules showing what they wanted.

Mr. GARDINER. Yes, sir; in effect, though, the Commission made a blanket order, "This section of the Interstate Commerce act is hereby suspended in every case where a railroad company wants it suspended until such time as we can investigate."

The VICE CHAIRMAN. But in the meantime they were required to present their schedules?

Mr. GARDINER. They were required to present their schedules and the whole thing to be taken over; but, gentlemen, that act went into effect in 1910 and certainly Congress intended that there should be some relief, and it did not intend that in every case where the railroad companies saw fit to charge more for a short haul than for a long haul that that was an exceptional case. But, if the commission construed it that way, for heaven's sake why, in seven years, have we not gotten to some conclusion on that subject? Why has the Interstate Commerce Commission construed every case to be a special case? I do not want to be uncharitable, but as a man who uses his brain and his thought occasionally—I may not give as much evidence of it in this hearing as I would like to—but I do use my brain and

my thought occasionally, and I find it impossible for me to conceive how any body of men could ever say that a special case consists of every case which a railroad company wants to have considered. If there was some special reason it would be different, but the law was designed to remedy a condition which already existed.

Congress knew what the condition was that existed, and knew where these greater charges were made, and they wanted to remedy that condition, and, as a result, passed this law and then the Interstate Commerce Commission virtually nullifies it in every particular by saying, "We will hold up the complete operation of that act until we have investigated every case which you claim to be a special case."

It seems to me that that, without going into details, is a sufficient indictment of the Interstate Commerce Commission; our cases pending for 10 long years and only partial relief in all that time; this amended fourth section pending for 7 years and no relief within that time. Why should the burden fall on us all the while? Why, during all that period, ought we pay higher rates? Was not that Interstate Commerce Commission made to stand between the railroad companies and the common people and to adjust things satisfactorily and speedily for the common people? On the other hand, has not the Interstate Commerce Commission stood between Congress and the railroads and kept the operation of an act of Congress from applying to the railroads?

Mr. SIMS. Do you think there ought to be a limitation on the time in which the Commission should make its investigation, and if not made within that time that the discretion should cease as a matter of law?

Mr. GARDINER. Senator, regarding the Interstate Commerce Commission, I have lost all faith and hope and charity.

Mr. SIMS. You mean it ought to be abolished?

Mr. GARDINER. I mean they should be given no discretion whatever. They have had seven years to enforce a law passed by Congress, and they have not enforced it.

Mr. SIMS. Is a public instrumentality of the Government worthy of existence which can not be trusted to use its discretion, wherein nothing but a specially qualified body could use it? Ought it to exist if it can not be trusted as a public agency?

Mr. GARDINER. I do not think it should be allowed to exist as far as the long-and-short-haul clause is concerned.

Mr. SIMS. Does not that measure its attitude toward the entire railroad service?

Mr. GARDINER. I might say yes, to a certain extent, and to a certain extent no. Let me explain in this fashion: I do not want, Senator, anybody to think that I, for a moment, would criticize our President. Our President deserves our cooperation in every way, shape, or form, and he has mine to the utmost. If he had known and realized the conditions which existed out here, he would have acted differently. But he has appointed on the Interstate Commerce Commission representatives from the western coast, representatives from the east coast, and representatives from the middle eastern coast, and there is not a solitary representative of this intermountain country upon the Interstate Commerce Commission. It is true that there is a man from Denver, but Denver does not find itself in the category of the intermountain country, and therefore, Senator, when it comes

to a consideration of these intermountain cases, we find ourselves being judged by the eastern coast, by the western coast, by the middle and eastern sections, and when the hearings are over and the conference is on, there is no one with a complete knowledge of this intermountain situation to make any plea for us and to see that right triumphs.

I say take away discretion from the Interstate Commerce Commission as it is constituted now to grant any right under any circumstances to a railroad to make a greater charge for a short haul than for a long. I say that as constituted the Interstate Commerce Commission is not capable of doing justice to our section of the country. But there are able men on that commission, and there are a lot of other questions before them. I do not mean to say for a moment that those people are intentionally unfair and intentionally unjust. They have gone a long way toward helping us, it is true, but every time they have made a ruling in our favor there has been a string attached to it, and when we reach forward to grasp the benefits of that ruling the string is drawn and we fall forward on our faces. When they were asked to reopen this case the last time if they had only said, "We will put into effect the rates as they actually exist, and we will give relief to the intermountain country and let you ask for higher rates," we would have had relief. But no, all the time it is, "Let the intermountain country continue to suffer; we will take care of the railroads first."

The CHAIRMAN. When was the decision by Mr. Lane to which you have referred given?

Mr. GARDINER. I think that was in 1912.

The CHAIRMAN. Was that in a matter arising under the amendment of 1910?

Mr. GARDINER. No, Senator; that was instituted long before the amendment of 1910.

Mr. THOM. We understand that it was under the act of 1910.

Mr. BARTINE. It does not make any difference what anyone understands, it did not arise under the amended fourth section. It arose under the old law. Commissioner Lane's opinion went to class rates only.

The CHAIRMAN. How do you account for it that no decision—though this amendment passed in 1910—that there was no action from the commission, according to your statement, until June 30, 1917? What was the reason of that long delay?

Mr. GARDINER. There were actions and hearings, and one thing and another, and my purpose in this presentation is not to endeavor to make any analysis of reasons why the Interstate Commerce Commission did not put that into effect. I do not care what their reasons were—the fact remains that they did not, and my criticism of the Interstate Commerce Commission is that they did not put that into effect. They have not put it into effect at the present time. They started to put it into effect in October of this year, under this opinion of June 30, and then, instead of putting it into effect, again they pulled the string and again they in effect recalled their decision; they suspended the operation of this and they are going to give the railroad companies another hearing, and I suppose our railroad commission will be carted over the country again for another series of hearings like it was carted over the country in the hearings which

took place in the past years, and whether we can get any decision on this subject within the next decade I do not know.

The CHAIRMAN. Were proceedings promptly commenced after the amendment of 1910?

Mr. GARDINER. Were proceedings promptly commenced after this amendment of 1910?

The CHAIRMAN. I can not understand for my part why there should be such a long time elapse.

Senator CUMMINS. Proceedings were commenced. The affirmative was on the railroads.

Mr. BARTINE. As soon as I can get to it I will give a brief resumé of what occurred.

Mr. GARDINER. You ask if proceedings were promptly commenced after the act of 1910. The burden was not upon any of the people who were suffering by these discriminations to commence any proceedings. The railroad companies immediately rushed to the Interstate Commerce Commission and said, "Here, every case where we are charging a greater rate for the short haul than for the long haul, is an exception. We want you to investigate that, but in the meanwhile we want you to suspend the operation of this amended act of 1910," and the Interstate Commerce Commission did suspend it.

The VICE CHAIRMAN. Yet it is the right and has been the right of every person injured to file a petition with the Interstate Commerce Commission and say that the amendment of 1910 was being violated and ask for an investigation and relief.

Mr. GARDINER. That, Senator, was the effect of the proceedings which took place right along under the petition of the railroad commission. The act was in effect all the time.

The VICE CHAIRMAN. You ought not to wait and let the railroad companies run both sides of the litigation. If you had put in your petition at the same time and asked that the suspension be not allowed there might be a different result. One reason why the railroads are successful is that they are vigorous and hire the best lawyers in the country, and they keep fighting these things. If you people would only be equally vigilant and hire lawyers and get busy, you will get by much better.

Mr. GARDINER. That was before the Interstate Commerce Commission—at the time it went into effect. The Interstate Commerce Commission realized that act was in effect and the railroad companies were fighting to have that act suspended and have all short hauls declared to be special cases, and the only fight which was necessary for the intermountain country to make was a fight to have that brought out and determined by the Interstate Commerce Commission as rapidly as it could, and that fight these different parties of the intermountain country did make and made that as rapidly as they could, but the railroad companies, notwithstanding all the diligence we have been able to exercise, have been able to keep that decision off until June 30 of this year, and then after we thought we had it they were able to come in and say, "There is another law that bears on this subject that you must look into before you enforce that order," and the Interstate Commerce Commission is now looking into it.

Mr. SIMS. How does that last act affect the decision of the Interstate Commerce Commission under the former act—the act of 1910?

Mr. GARDINER. It affects it in this particular, that the claims of the railroads are that there must be an investigation to determine by the Interstate Commerce Commission whether or not they have the right to raise the coast rates.

Mr. SIMS. Do they allege that it is their purpose to raise them? Did they file an increased schedule on these coast points?

Mr. GARDINER. There has been no increased schedule filed yet.

Mr. SIMS. We were all members of the Committee on Interstate Commerce when that legislation was passed last year, and I think I know something about the reason for adopting that amendment. There was a demand for increased rates, and it is provided that if schedules are not acted on within a certain time they become effective without investigation. There was a conference provision put into the act by which no increases should go into effect until authorized by the Commission, because if they had filed them as they could have done, in such volume that the Commission could not possibly have investigated them, they would have gone into effect automatically. How does that prevent the result of the final investigation of the Commission as to whether or not a discriminatory rate existed in 1910, and that there was no special reason why it should continue in effect?

Mr. GARDINER. I do not know, but I know it was contended by the railroad companies that that was the effect and that the Interstate Commerce Commission suspended its ruling on June 30, which was to have gone into effect on the 1st day of October. Personally, I think there was no necessity for it at all.

The VICE CHAIRMAN. After six months from the enactment of that amendment in 1910 it was unlawful for the railroads to collect for a short haul more than for a long haul unless they secured an exception in each particular case from the Interstate Commerce Commission. The railroads maintained—it is their theory, and to some extent it is correct—in order to change one rate you affect all the rates, and that you unsettle the whole situation to change a rate at one place. That is on the same theory as a see-saw—you put down one end of the plank and the other end rises—and I believe the railroads have consistently followed the see-saw idea.

Mr. GARDINER. I quite agree with you that that is the position which has been taken by the railroads, Senator.

Mr. SIMS. The point I do not understand is why the commission says or considers that it is mandatory upon them to continue the condition of a special case that originated under the law of 1910.

Mr. GARDINER. I do not know, and I can not answer that, and to tell the truth, I do not think there was the slightest reason why the Interstate Commerce Commission should have held up the effects of its decision of June 30. I think it could have put that into effect on October 1, just as it originally determined to put it into operation. I say that there was no legal reason under the law why it should not have been put into operation, Senator, but my contention is that the Interstate Commerce Commission did suspend that when we thought we were going to get some relief.

Mr. SIMS. We are not all Senators, but would like to be, and I suppose you want to please us.

Mr. ESCH. I invoke the rule, Mr. Chairman, with reference to cross-examination.

Mr. GARDINER. I, unfortunately, do not enjoy the acquaintance of all members of this body.

The VICE CHAIRMAN. I do not know what rule Mr. Esch wants to invoke, whether he wants to continue to be called Senator or prevent the witness from getting information from Judge Sims.

Senator CUMMINS. I think he wants to have the witness continue without interruption.

Mr. GARDINER. I am very glad to have anything developed which throws any light upon any subject at all.

The CHAIRMAN. The rule of the committee is that the questioning of witnesses will proceed after the witness has concluded. You will proceed now.

Mr. GARDINER. It is immaterial to me. Any questions that are asked I shall be only too glad to answer them if I can, and if they happen to require a more intricate knowledge of the entire situation, I will pass them along to Judge Bartine, who has been through this from the beginning to the end and can give you more of the history. The main thing I want to do is to bring to you the sentiment of this intermountain country and the sentiment is that for all this time we have been discriminated against, the action of the Interstate Commerce Commission in delaying and postponing, giving us something and taking it away again, is such that our confidence in getting results through the interstate Commerce Commission is so far shaken that we stand for a long-and-short-haul clause, iron-clad, and absolutely so, so that the railroad companies shall not be able, under any circumstances, to charge more for the short haul than for the long. That is the burden that the people of the State of Nevada have been under for years and years and years, and that is their right.

Let me ask you gentlemen this: If a greater charge for a short haul than for a long haul is defensible, why is it not something that will work just as well in the East as it will work in the West? Why is it that on shipments of grain, and fruit, and canned goods, and other products of the West to the Atlantic coast there is not a back-haul charge, or why is it that there is not an increased cost to the interior towns? Why is it that Cincinnati and Cleveland do not pay more than New York on shipments which are made from our coast back there? The whole truth of it is that this was conceived and worked out long after the eastern situations were established, and the eastern rates were established, and whoever designed this iniquitous form of rate making I do not know. I do know that it is in existence and that it has been in existence out here for a protracted length of time, probably ever since the railroads started operation out in this country. Another thing, they may contend that they need to raise their rates to the coast in order to get greater remuneration, but here is something for you gentlemen to bear in mind: My information is that on every shipment from the East to San Francisco there is a certain proportion of the charge divided up among the different carriers. On every shipment from the East into Reno, none of the eastern roads participate in the greater charge to Reno. They only get their proportion of what the rates happen to be if the goods went through San Francisco, and the

western roads get the balance. It shows that these terminal rates are remunerative and satisfactory to the eastern roads. Let the western roads show why it is necessary to charge us that much more. We have been under that burden, and we have been taxed by this rate for years and years, and we have done our very best to get relief from the Interstate Commerce Commission, and we have gotten no relief at all, and that is the reason we appeal to you.

Let us illustrate a case: I believe Senator Townsend lives in Jackson, Mich. Now, suppose that Jackson, Mich., was charged on all goods which came from New York to Jackson the rate to Chicago and a small rate back. Suppose Chicago was paying 75 cents, and suppose Jackson, Mich., was charged a dollar. Suppose, also, that Detroit, that great automobile center, on all its steel which it gets from Pittsburgh, was charged the rate to Chicago and a rate back again. Suppose that was the condition which would confront Senator Townsend. Suppose not only that would apply to Detroit, but apply to Jackson, and suppose it applied to every town and community all through the State of Michigan. Suppose they were taxed in that fashion. I am picking out a typical eastern city, distinguishing it from the western communities. This is what we have in the West. Suppose Senator Townsend had that same condition in the State of Michigan. Would he not go to the Senate with the idea that that was the one fight above everything else which he had to contend with? Would he not go there feeling that his sole duty, beyond his allegiance to the country to end this war, was to have an ironclad long-and-short-haul clause which would forever shut off a condition like that? If he did not take off his coat and do everything which was to be done in that particular would he not go back to his community feeling like he was a traitor to his community, a Benedict Arnold, or a Judas Iscariot? That is the situation we have here, and when our two Senators and their lone Congressman go to Congress and favor an ironclad long-and-short-haul clause before everything else except their allegiance to this country in the war, and when they fight for it and appear before the Senate and House committees in their hearings and ask for this, and when these other Senators and Representatives of this western country, and when all these western Congressmen and Senators make that kind of a fight, do not look at them as western fanatics or western crazy men, but look at them as men trying to right a wrong and an injustice and change an arbitrary discriminating situation which has been existing against this intermountain country from the beginning of things, and remember that we have come to the last fight and that we are going to fight it to a conclusion. That is the position we take here.

There is one thing I want to say, and I say it with just a little hesitation, but I know you gentlemen will take it in good part; I understand there is going to be a meeting of this committee in Portland. There has been one in San Francisco.

The CHAIRMAN. There will be none in Portland. San Francisco is the only place. It is expected that those who wish to be heard in the intermountain and Pacific region will come here. That has been the determination of the committee.

Mr. GARDINER. I was just going to make this suggestion: The people of the intermountain country have been asked to come down here in the stronghold of the enemy. I am very glad to have the oppor-

tunity of coming. I know you gentlemen are all open-minded and that you are going to weigh this thing and weigh it thoroughly, but there is a sort of saturated atmosphere down here, and that saturated atmosphere is not the cool, clear, bracing, invigorating mountain air that you get in this intermountain country. It is more or less polluted, and the pollution consists in this discriminatory idea which I have been describing to you gentlemen, or endeavoring to describe to you, and different people that you will talk with are of the leave-well-enough-alone type, and consequently beyond the few speeches that you may hear from different people at a distance, who are opposing you in this subject, the whole tendency and the whole psychological effect is going to be antagonistic to this intermountain region. Do you not think if you gentlemen, after sitting here, came up for a couple of days to Reno and then went up for two or three days to Spokane, you would get the other atmosphere on this situation?

The atmosphere up there is very invigorating and a very inspiring one on this question, and you will find that the whole people in all that section are up in arms on this one particular subject, and that that is their one fight, that they want this ironclad long-and-short-haul bill, and they want all discretion in that connection removed from the Interstate Commerce Commission. I wish to thank you gentlemen very much for listening to me so patiently, and I extend to you, on behalf of Reno and the whole intermountain country, a most cordial invitation to hold at least a short session in one of those communities. I think if you will talk it over among yourselves you will find that it is a rather fair courtesy to extend us, and that the reward to all of you gentlemen of a better insight into the situation will be a very material compensation for your coming there, and you can see for yourselves the extent to which this intermountain country has been held back by the discrimination which has been exercised for so many, many years. I thank you, gentlemen.

The CHAIRMAN. Are there any questions you want to ask Mr. Gardiner, Senator Cummins?

Senator CUMMINS. I think there are a few questions I would like to ask. I would like you to divide this subject into two parts so that we can look at the matter from two standpoints, which, I think, are entirely distinct. It is very evident that a coast community is benefited by a discriminating rate, and I can understand the selfish motives of San Francisco or any other coast city that prompts it to insist on those rates. I want you to look at it a minute from the standpoint of the carriers. These rates have been made by the carriers, have they not?

Mr. GARDINER. They have.

Senator CUMMINS. You expressed a great sympathy with the railroads, but I assume that you meant by that that you are in sympathy with them when they are right, and you are opposed to them when they are wrong—that is right, is it not?

Mr. GARDINER. Correct.

Senator CUMMINS. The tenor of your argument is that they have been wrong about this whole matter and you are opposed to them in that respect, are you not?

Mr. GARDINER. I am.

Senator CUMMINS. I would like to know from your point of view why the railroads desire to build up the western portion of Cali-

fornia and of Oregon and of Washington at the expense of the intermountain States?

MR. GARDINER. I do not know.

Senator CUMMINS. We have heard, and most of us believe, that the chief object of a common carrier is to make money—it is not very altruistic, generally speaking. I would like to know from some one who has studied the question—and I know you have—why it is that the railroads pursue this policy which has been a voluntary one upon their part?

MR. GARDINER. Senator, I would like to be able to answer that. I will tell you what I think. I believe—you know this rate-making business, and the condition in which it is in the intermountain country, goes away, way back. It goes back to the beginning of affairs, when the early population was along the coast, and when the interior was more or less of a waste, and I suppose under those particular circumstances they started in with making a through rate, and I suppose all the goods did first go to San Francisco, which was the terminal, and I suppose, then, after that the railroads began building in different directions, and that goods actually did go to San Francisco and then were hauled back to these other communities, and I suppose that back-haul proposition went into effect. It is true, to a certain limited extent, that there was in the early days some water competition and that was taken up as an excuse for the establishment of terminal rates. Then, as these more remote sections from the terminals built up, that back haul became more and more pronounced and it was seen to be more and more of a revenue producer, and I believe that gradually grew up. Now, jobbing interests have grown up here, and it is a condition which, if remedied, is going to hurt, to a certain extent, the jobbing interests here on the coast. Naturally they are the heavier jobbers of goods, and they are closer to the railroad companies, and they enjoy their friendship better, and all of that; and, to tell the truth, I believe this is more of a jobbers' fight than it is a railroad fight.

I do not believe the railroad cares how it gets money. I believe it would just as lief charge as much here as it charges to all of us in the intermountain country, and I believe the railroads feel where they can—if they would give more favorable rates to the intermountain country, the railroads would be favored. I believe it is a jobbers' fight. There are several railroads which come in here, and if one, for a minute, conceded—if one of the railroads should immediately start to concede any rights to the intermountain country, the jobbing interests would ship over the other roads, and the result is that each railroad is afraid to make the change. Honestly and sincerely, I believe that is the case. I believe the railroads would just as lief make that change. They will not admit it, because if they did admit it, the cat would be out of the bag on the part of the railroad represented by the man who made the admission, and, therefore, the traffic would go to the other railroads. I believe this is more a jobbers' fight than a railroad fight.

Senator CUMMINS. Whatever else may be charged against the railroads, I think we all have conceded that they are managed intelligently; that is, they know what they are doing and they know why they are doing it.

MR. GARDINER. I do not doubt that.

Senator CUMMINS. And if they thought they could make more money by giving you the rates which you believe you ought to have, do you not think they would do it? Are they so completely under the control of the jobbers of the United States along the coast that they are not at liberty to do what they might think is the best thing for their own interests?

Mr. GARDINER. There are a lot of ramifications to a railroad company. A railroad company does not consist of its tracks, its cars, and its business managers; it consists of its directors, its stockholders, its bankers, its shippers—the ramifications are so great, they are so big and an interwoven fabric, that I am not prepared to say that the railroads would consider it a good business thing to break away if they wanted to.

Senator CUMMINS. That is a paraphrase for saying the railroads pursue this policy because of some ulterior benefit that those who are connected with the railroads may secure out of the business carried or done on the Pacific coast, is it not?

Mr. GARDINER. Yes, sir.

Senator CUMMINS. Are you of the opinion that if these incidental things—if they may be called incidental—were entirely eliminated, that the railroads could by a proper adjustment of their tariffs make as much money as they now make under their existing rates?

Mr. GARDINER. Certainly.

Senator CUMMINS. The men who manage the railroads are perfectly aware of the resources of these intermountain States and of their capacity for development and growth, of course?

Mr. GARDINER. Certainly.

Senator CUMMINS. There is nobody better acquainted with the situation of these various States and what they are capable of doing than the railroads themselves. Now, the conclusion of your argument is that the railroads have deliberately thwarted or prevented the growth and development of these States in order to build up the terminal points?

Mr. GARDINER. I am not prepared to give a reason for the railroads, but I do say that is the effect of their policy.

Senator CUMMINS. I am now assuming a time and a condition of no substantial competition by water, for I have long been persuaded that that was a mere superficial excuse or reason given, and I have always thought there must be some other reason than competition by water for the extraordinary situation which has existed for a very long time. I am trying to find out the reason.

Mr. GARDINER. I wish I could enlighten you, but I can not. I can not tell what the reason is unless it is along the lines which I have given you. Of course, there is one other thing that may be in mind now, which is causing this fight, and that is the potential or possible water competition of the future; that there might come a time when they will need, or when they will want to make greatly lower terminal rates in order to compete with the steamboat lines, and do not want to abandon the higher charges for the intermediate points, but keep them held up for a time when they really will need something of that kind. There may be something in that, but that is merely speculative.

Senator CUMMINS. Do you believe that water competition is likely to deprive the railroads of sufficient traffic so that their entire facili-

ties will not be demanded in carrying the traffic that they will get anyhow?

Mr. GARDINER. No, I do not for a minute. There will be some things that will go via water, but only comparatively few, and the demands on the railroads, I think, beyond any doubt, will be always what they can carry. The matter of time enters into these shipments always.

Senator CUMMINS. Barring occasional and very unusual conditions of depression, the growth of the country taxes to its limits the capacity of the carriers to do the business offered to them?

Mr. GARDINER. It does.

Senator CUMMINS. And have you ever known a time when water competition took away from the railways—the transcontinental railways—a sufficient amount of traffic to leave idle any considerable part of the railway equipment?

Mr. GARDINER. Not only have I never known of such a time, but I do not believe there was ever such a time.

Senator CUMMINS. And from that point of view, there is no likelihood of there being such a time?

Mr. GARDINER. That is correct.

Senator CUMMINS. So that the desire of the railway companies—and it is a natural one—to employ their facilities to their reasonable capacity does not account for the difference between the rates which have been established for the terminal points as compared with the rates established for the intermediate or intermountain points, at all, does it?

Mr. GARDINER. No; I can not see how it does.

Senator CUMMINS. You have not thought that the railroads are unconscious of what might be accomplished by reasonable rates to the intermountain country, have you?

Mr. GARDINER. No, sir.

Senator CUMMINS. I wish you would put on record your views of how these intermountain communities may grow if they were given proper encouragement: their population is now not great as compared with some parts of the country, but I would like to have the record show your views of the future with regard to these countries.

Mr. GARDINER. Well, I believe, Senator, in the first place, that any community which is more or less dependent upon some other community for its supplies, or as a base of supplies, loses its self-respect; that it is a dependent rather than an independent community. Now, if our cities are not able to get their merchandise from the East and distribute it to the smaller towns around, they are dependent organizations. Our community is in that situation at the present time, and most of the others are. In addition to that, the commercial bodies of these various communities are concentrating their efforts upon this particular fight, when, instead of that, if the fight were won, they would be centering all their efforts upon matters of local and State development, upon proper methods of advertising in the State, and upon the bringing of settlers into the State, and all those things, and they would change and they would devote their attention to them.

Then I also believe that when you build up a jobbing community you build up a far better banking community; that the banking resources are increased and that the money necessary to be loaned to people in business for buying homes or in working their farms and

gathering up cattle, and matters of that nature, all can be taken care of to better advantage. I also believe that one will find that where a State has shown itself to be one which the railroads put upon a par with the larger States that in itself helps the State very materially indeed. Now, of course, there is another feature of it, and that is that the amount of money which we pay for freight shipped from the East at the present time, while it does not add very materially to the cost of any one commodity, when these commodities are distributed around at retail and sold in the aggregate yearly it takes out of the State a very large amount of money which could be kept at home and used to great advantages in internal improvements. I hesitate to venture a guess as to how much money that would amount to, but it would mean a very great deal. Nevada is a producing State in some agricultural products, in mining, and in live stock, and some others that I might mention, but those are the most pronounced, and Nevada is a State which produces a great deal of money, but sends out a great deal of money. The stockholders of the mines are nonresidents of the State to a great extent, and people in other lines are nonresidents to an extent, and the drain upon the resources of the State for money produced in the State is great and any output of money from the State which we can shut off is going to help very greatly. Those are the thoughts which come to me on the spur of the moment, Senator; that is something that ought to be elaborated to a great extent, but it is a feature to which I have not given extensive thought.

Senator CUMMINS. Suppose the rates of Reno and like communities were reduced to the level of the terminal rates, what effect would that have, in your opinion, on the revenues of the carriers?

Mr. GARDINER. It would increase them very materially. There is enough freight that would be brought into Reno so that that slight saving would leave a great deal of money in Reno which now goes out.

Senator CUMMINS. How would it affect the revenues of the carriers?

Mr. GARDINER. Oh, I can not tell you how much freight comes into Reno. When Mr. Shaughnessy comes here he can give you all the figures. Naturally, if Reno were given the coast terminal rates it would materially decrease the gross revenues of the railroads, in my opinion, and as conditions are now it would only be fair to let the coast rates be raised.

Senator CUMMINS. I do not think you catch the idea I had in my mind. If the intermountain rates were reduced to the level of the terminal rates and there was no change in the volume of business—no growth or development in the communities of the Intermountain States—necessarily the revenues of the carriers would be decreased, but what effect upon the business of these Intermountain States would the reduction of the rates have?

Mr. GARDINER. Why, Reno would become a distributing point for probably northeastern California, western Nevada, most of the western part of Nevada: it would import a great deal more in the way of goods than it does now and distribute them, and it would have the advantage of all of the facilities.

Senator CUMMINS. Do you think the traffic from Reno to the territory tributary to it would be greatly increased?

Mr. GARDINER. Undoubtedly. I will not say Reno itself will become a distributing point for much more of the territory than I have mentioned. Probably Winnemucca, Elko, and probably Tonopah, in southern Nevada, will become distributing points also.

Senator CUMMINS. Suppose the rates enforced at the terminal points were increased to the present rates of the intermountain territory, what effect would that have upon the revenue of the railroads?

Mr. GARDINER. Why, it would largely increase the revenues of the railroad companies, because it would attach to all of the goods now shipped to the terminal points, and it would also increase the revenue of railroad companies on goods shipped to Nevada, because Nevada under the adjustment of the rates would have the facilities then for doing the jobbing of its own community.

Senator CUMMINS. What effect would a change of that kind have upon the business of the terminal points?

Mr. GARDINER. It would make it necessary for the terminal points to find other jobbing business within reasonable limits, and those reasonable limits would probably be the territory west of the Sierras.

Senator CUMMINS. What proportion of the jobbing business of Nevada is done directly from the coast points as compared with that which is done from the interior points?

Mr. GARDINER. Before I answer that question I want to add to my last answer that it would not be necessary either for the coast jobbers to confine their business to the part of California west of the summit of the Sierras. Those people could, as rapidly as they wanted to, establish branches in any part of Nevada, and there distribute their goods in competition and under the same conditions as any local dealers would. That is probably what they would have to do.

Senator CUMMINS. You would treat the branch as a local enterprise?

Mr. GARDINER. The change of the rates need not curtail the business of these people. They could establish a branch to meet the curtailed business, and that would benefit our community to the extent of having those people residents of our community.

As to the proportion of jobbing done by local concerns there in Reno and concerns from terminal cities, I could only guess at that, Senator. I have never had those figures presented to me, and I would hardly like to put a guess in the record.

Senator CUMMINS. Is a large part, or any considerable part, of the distribution by the jobbers directly from the coast points?

Mr. GARDINER. Yes; a very large part. Until recently—until we got a little better condition by reason of Commissioner Lane's decision, which did go into effect—why, practically every bit of it was done from the terminal cities.

Senator CUMMINS. Did that consist of shipments or distribution of goods which originated from the East and had been carried to the coast from eastern points over the railways?

Mr. GARDINER. Not entirely, but such goods were a part of it, and nearly all of those eastern goods were handled in that fashion.

Senator CUMMINS. Now, you have said several times that you could think of no defense for this policy except the well-known rule of imposing all the traffic would bear. It has seemed to me that that rule is not the one invoked. It seems to me that from your stand-

point, the roads imposed a great deal more than the traffic would bear and thereby destroyed the traffic. Is not that so?

Mr. GARDINER. Yes; I agree with you, Senator. I accept the amendment.

Senator CUMMINS. The rule of all the traffic would bear, I suppose, means that a charge will be made that will move the business, and when you charge more than that you destroy the traffic. I had in mind to ask you about the cost of service. Have you ever investigated the cost of bringing goods from the east to Reno, as compared with the cost of bringing the same goods to San Francisco?

Mr. GARDINER. I have not done that, but Mr. Shaughnessy, one of our railroad commissioners, has all that data. He prepared it for the Interstate Commerce Commission and can give it to you.

Senator CUMMINS. Aside from the weight of the carload, which I think you suggested might, or was in some instance, heavier on the terminal shipments than on the intermediate shipments, is there anything of which you can think that makes the service more expensive to Reno than San Francisco over the Southern Pacific road?

Mr. GARDINER. Not a thing. Every carload which goes to San Francisco over the so-called Central Pacific—formerly called the Central Pacific—must go through Reno. After it gets to Reno it must be hauled 244 miles. That carload, when it gets to Sparks, a terminal point 300 miles from Reno, is picked up by a heavy compound Mallet engine, used for that purpose, and hauled up to an elevation of 2,500 feet, and then it goes down a fall of 7,000 to tide-water, through that run of 244 miles. Whatever might offset that haul of over 244 miles, I do not know. Then, when you consider on the eastern freight the haul of 7,000 feet from San Francisco and then on beyond Reno, the rate charged San Francisco is only 10 or 15 cents more than the rate charged from Reno to that point, it makes it still worse and it gets us going and coming.

Senator CUMMINS. The reason I have always heard given for the discrepancy or discrimination, of which we have been speaking, is this, that the rate to the intermediate point considered in and of itself is a reasonable rate, and if the rate to the terminal point were raised to meet it that the railroads would not get the business and that in the end the rate to the intermediate point would be even higher than it is now. That is the reason I have always heard given for this discrimination.

Mr. GARDINER. That might hold good perhaps in some communities where railroad facilities or the geographical conditions might be different, but how that could be true out here I can not figure out, because these people must get certain goods from the East, and they will get them, if they have to pay a few cents higher or a few cents lower. The goods are sure to go. Now, if any of these terminal rates are lower, why the goods would go through just the same. Now, when it comes to leveling up the rates, so as to make the rates correspond, I am satisfied that the greater quantity of freight which goes to those terminals, if the rate were increased only—let us just estimate it at 2 or 3 cents a ton—the Reno rates were leveled to that amount, the increased percentage to the coast would be such that that 2 or 3 cents extra charge would make up on the increased amount of freight, the 25 or more cents eliminated on the

haul to Reno, so it would probably be necessary to raise those coast rates very little.

Senator CUMMINS. You have indicated that Congress ought to amend the fourth section of the interstate commerce act by making the rule rigid, namely, that no greater charge should be made for the shorter haul than the longer one, both being over the same line and in the same direction. Why are you satisfied with that limitation? Why do you not reduce it to its philosophical form? Why should Reno pay as much as San Francisco?

Mr. GARDINER. Well, I think the reason I have not asked that is because I am a charitable person and not a railroad man. I think we ought to pay less, but if we are allowed the same rate we can do business and are satisfied.

Senator CUMMINS. But you are thinking only, all the time, possibly, of the mere distributor. But somebody must pay this price, and that is the people of your community, those who consume what you distribute, are the people who ought to be considered, because every freight charge is passed along, but the charge they pay they must absorb. Therefore, is it not fair to the common people of Nevada that the things which are brought to them by a railroad shall pay only a compensatory rate without regard to the rate to San Francisco?

Mr. GARDINER. I understand that that is the rule which is in operation in the East, but we have been so long trying to get only an equal rate, without having any success in getting it, that we feel we are doing better to ask only an equal break; personally no one can blame us for asking for an equal break. We are not asking for the best of things.

Senator CUMMINS. You mean you have suffered injustice to long you are willing to accept a partial reparation and not a complete reparation?

Mr. GARDINER. That is right.

Senator CUMMINS. Do you think the rule of the fourth section should be made rigid in all circumstances; that there ought to be no exceptions?

Mr. GARDINER. I do.

Senator CUMMINS. Have you considered the instance that has been mentioned here more than once by some of the witnesses, of competition between two lines of railway, one of which may be circuitous and therefore longer than the other?

Mr. GARDINER. No; I have not considered that, Senator, but I have considered this, that if the railroad companies had come to the Interstate Commerce Commission and had asked to have taken up those cases, which were special cases, a case like that which you mention, then we would have said, "All right, let it stay." If the Interstate Commerce Commission had said, "Gentlemen, if you have got a case like that, we will consider it a special case," then it would be all right, but when the railroad companies come to the Interstate Commerce Commission and ask the Interstate Commerce Commission to defy the amended fourth section and consider as a special case everything which the railroad company wants so considered, every particular case where they have ever charged a back haul, then the railroad companies have brought it on themselves, and they can take the

consequences if an ironclad amendment puts the shoe on the other foot for the once. I do not mind that shoe pinching.

Senator CUMMINS. Your argument seems to me to lead to the conclusion that in your opinion the railroads have altogether too much influence with the Interstate Commerce Commission.

Mr. GARDINER. Well, Senator, I would not like to go on record as saying that.

Senator CUMMINS. What do you mean by saying what you did say?

Mr. GARDINER. I mean for seven years the relief which Congress thought they had granted us has been denied us, and that the Interstate Commerce Commission has had the power to give it to us at any time during that period. I am not saying what their reasons are for not doing it.

Senator CUMMINS. The Interstate Commerce Commission has been investigating this intermountain situation, I think, for more than 10 years. I do not remember just how long it has been. It knows about all there is to know about it, it seems to me; and when you suggest that time after time the commission has failed to give the relief which the law requires, that is simply another way of saying that it is trying to favor the railroads, from my standpoint.

Mr. GARDINER. Well, I will say this, that the effect of this ruling has been to favor the railroads.

Senator CUMMINS. Have the railroads ever claimed that rates which they have been charging upon traffic to the terminal points are not compensatory?

Mr. GARDINER. I do not think they ever have; in fact, the Interstate Commerce Commission has gone so far as to rule that the railroad companies have no right to put into effect at terminal points rates which are not compensatory.

Senator CUMMINS. In your connection with the matter, have you ever entered into the degree of compensation—that is, to determine whether these terminal rates are fully compensatory or only afford some profit above the cost?

Mr. GARDINER. No; that work has been gone into by Mr. Shaughnessy. He can give you all that data when he appears.

Senator CUMMINS. I am glad that you feel you can not blame the communities out here for getting all they can; that seems to be human nature. And I do not want to be understood from anything that I have said that I have any criticism upon any community for trying to get the best rates possible for its business; and I hope before we have finished that the reasons for this situation may be fully developed. I have never been able to understand it, I will say.

Mr. GARDINER. Well, I would like to hear some logical reason advanced myself.

The CHAIRMAN. Mr. Gardiner, the most populous part of Nevada is in the northern part, is it not?

Mr. GARDINER. Yes, sir.

The CHAIRMAN. It is served by but two transcontinental railroads, the Southern Pacific and the Western Pacific, is it not?

Mr. GARDINER. Yes, sir.

The CHAIRMAN. The Western Pacific has not yet secured much of the business, I believe, as far as Nevada is concerned?

Mr. GARDINER. I doubt very much whether it has.

The CHAIRMAN. You realize, therefore, that, so far as Nevada is concerned, the Southern Pacific controls most of the transportation business—the very much larger proportion?

Mr. GARDINER. Yes, sir.

The CHAIRMAN. Do you realize also that San Francisco, as contrasted with the Atlantic ports, with reference to transcontinental traffic, the Southern Pacific is in practical competition with numerous transportation routes—the Northern Pacific, Great Northern, the Union Pacific, the Western Pacific, the Atchison, Topeka & Santa Fe, and also in competition with the Panama Canal?

The VICE CHAIRMAN. And the Canadian Pacific.

The CHAIRMAN. In view of that fact, would you not regard 100,000 increased population in Nevada as being of more value to the Southern Pacific Railroad than an increase of 100,000 people in the city of San Francisco?

Mr. GARDINER. Yes, Senator; I most emphatically would. I would like to answer one part of your question as to the number of railroads that the Southern Pacific is in competition with. I know that there are all those different railroads you mention running into the terminals, but I do not know enough about the railroad situation to know how much competition there is, putting emphasis on the word “competition.”

The CHAIRMAN. Unless there is some understanding between them, they are naturally competitors, because the other rail lines have steamer lines running down the coast to serve their purpose in competing with the Southern Pacific at San Francisco. From the standpoint of railroad policy, you would regard that increase of population in Nevada, where the Southern Pacific has almost a monopoly on the situation, as more valuable than an increase in the population of San Francisco?

Mr. GARDINER. I think I would, because there is also the situation that Nevada imports probably a great deal more per capita than California imports, and there would be more freight hauled per capita with the increased population.

The CHAIRMAN. Now, then, so if there should be a readjustment on just lines, such as you indicate, equalizing the through rate, so far as Nevada points and San Francisco are concerned, the result need not necessarily be injurious to the Southern Pacific Railway?

Mr. GARDINER. No; I do not think it would be injurious. There is no reason why it should be injurious, especially if there is an increase, and a very slight increase in the coast terminal rates.

The CHAIRMAN. Now, another thing, the Panama Canal is supposed to be competitive with all these transcontinental lines. There is either actual competition or potential competition, and you realize, do you not, that potential competition may diminish rates as well as actual competition?

Mr. GARDINER. Yes; I think potential competition may, especially if it is likely to be reasonably imminent, but if it is likely to be very considerably deferred, I do not think it would operate that way.

The CHAIRMAN. You do not think it would be appreciable in that case?

Mr. GARDINER. No, sir.

The CHAIRMAN. I agree with you there. Now, with reference to the policy of these great transcontinental lines that serve this coast,

and also serve the intermountain regions, assuming that from the Atlantic ports through the Panama Canal tonnage must be transported at a much less cost than over these railroads, do you not think that from an economic point of view, the standpoint of the interests of the entire Nation, that that traffic ought to be carried through the Panama Canal?

Mr. GARDINER. Yes; I do.

The CHAIRMAN. Then, from that standpoint it is to the interest of the Nation to see to it that that transportation is not killed by unfair competition?

Mr. GARDINER. I think so.

The CHAIRMAN. But that it is promoted as far as the policies of the National Government can promote it—is that your view?

Mr. GARDINER. Yes.

The CHAIRMAN. Now, assume that was done, do you think there would necessarily be an adverse economic effect upon the transcontinental lines that serve these coast regions?

Mr. GARDINER. Naturally, some of the transcontinental business would be diverted. There is no doubt of that. On the other hand, with the growth of the country and the demands made on the railroads and the different commodities which do not lend themselves readily to water carriage, I do not think that the effect on the transcontinental railroads is going to be great at all.

The CHAIRMAN. You think that the loss of the transcontinental traffic which, if conducted in competition with the Canal, must necessarily be at low rates, would be made up by a compensatory traffic on the coast itself and to the intermountain region if this entire region prospered?

Mr. GARDINER. Yes, and not only that, but the demands for transportation by the railroads from and between points not touched by water competition, are getting greater and greater all the time—beyond the power of the railroads to handle them. Take the coal shortage at the present time. In most instances it is simply a lack of transportation facilities, and the railroads having more than they can do now, it seems to me that the comparatively small portion of the tonnage which will be taken care of by water will not have a very great effect upon the revenues of the railroad companies.

The CHAIRMAN. So far as the jobbing interests of the Pacific coast are concerned, and their ability to serve not only the coast region but the intermountain region, would not that be promoted by cheap rates through the Panama Canal?

Mr. GARDINER. Why, there are certain commodities which lend themselves to water traffic which might be brought from eastern ports around through the Panama Canal and laid down there at a less rate than is charged by rail, and there might be some few that would be so much less that a coast jobber could put them into Nevada in competition with houses there, but I should not say that would have much effect, because if there are any such commodities a Nevada man can get them shipped westward by water and then shipped up to Reno and there distributed.

There will be cases, of course, like I illustrated, where, if the rates from San Francisco to Reno and from Reno to the other points are greatly in excess of the through rate from San Francisco to that point, there will be some cases where certain goods brought out by

water could be shipped from the coast terminals in competition with the goods brought out under a lower rate to Nevada from eastern points.

The VICE CHAIRMAN. I suggest that the hearing be suspended for two hours, and that the committee immediately take up the matter regarding procedure—

Mr. THOM. There was some little misunderstanding a moment ago about a decision of the Interstate Commerce Commission as to whether or not it occurred under the amended fourth section or the old fourth section. I assume there must be a difference in what Judge Bartine is referring to and what I am referring to. The decision by Commissioner Lane of the case of the Railroad Commission of Nevada against the Southern Pacific Co. and others, which was decided June 22, 1911, is the one I was referring to. That was under the new and amended section. I have the case here for the examination of the committee.

The CHAIRMAN. Have you any questions, Mr. Adamson?

The VICE CHAIRMAN. The examination of the Chairman and Senator Cummins has been so thorough that I do not care to examine the witness.

Mr. SIMS. The question of the fourth section of the act is one of the utmost importance to these communities, and, therefore, I would like to have all the information I can get. I have some questions.

(Whereupon, the committee went into executive session, at the end of which a recess was taken until 2.30 o'clock p. m. of the same day.)

AFTER RECESS.

The hearings were resumed at 2.30 o'clock p. m. after the taking of a recess.

STATEMENT OF MR. WILLIAM M. GARDINER—Resumed.

The CHAIRMAN. Mr. Gardiner, a long time has elapsed since the adoption of the amendment to the fourth section of the interstate commerce act, regarding the long and short haul. I believe that was passed in 1910, and I understood you to say that a decision was rendered June 30, 1917, seven years later, by the Interstate Commerce Commission; that the operation of that decision has been since suspended because of a change in the interstate commerce law, which prevented any increase of rates without the authority of the commission. How does that provision, recently passed, intended to prevent increases of rates without the scrutiny of the commission, affect that decision of June 30, made by the Interstate Commerce Commission?

Mr. GARDINER. My understanding of that is that on the attention of the Interstate Commerce Commission being called to that amendment by a petition for a rehearing or a petition for a stay of execution of their order, or something of that nature, that the Interstate Commerce Commission suspended the order which it made on June 30, and as a result of which the order of June 30 is inoperative, and we do not know for how long it will be inoperative.

The CHAIRMAN. Did that order of June 30 contemplate any increase of rates?

Mr. GARDINER. It contemplated, as I read that opinion, the leveling of rates, and by leveling I mean a new tariff in which perhaps some of the coast rates would have to be raised in order to give the railroad company a greater revenue to compensate for the lower rates into Nevada.

The CHAIRMAN. So that your view of that order is that it possibly contemplated an increase in some rates?

Mr. GARDINER. I have no doubt of it.

The CHAIRMAN. Very well then; assuming that to be the fact, was it not the duty then of the Interstate Commerce Commission to prevent any new schedules of rates presented by the carriers which proposed increases from taking effect until the commission could inquire into the matter and could either authorize or disapprove those increases?

Mr. GARDINER. I presume that that was one of the horns of the dilemma which the Interstate Commerce Commission could have taken, and it was the horn of the dilemma most favorable to the railroad companies. On the other hand, the Interstate Commerce Commission could have said, "You have been discriminating for years and years, and it was the intention of Congress in 1910 that you should charge no greater rates to Nevada than you were charging to the coast. Now you put into effect in Nevada the same rates that you have on the coast and then apply to us for permission to raise the other rates."

The CHAIRMAN. You think that should have been the action of the commission—

Mr. GARDINER. I think by all means.

The CHAIRMAN (continuing). Preventing any increases of rates, but leveling the rates, which would mean that the rates to the intermediate points, I imagine, would be lowered?

Mr. GARDINER. Yes, sir.

The CHAIRMAN. And then, later on, to take up the consideration of the question as to whether that lowering of rates at intermediate points did not justify a balancing by an increase of the terminal points?

Mr. GARDINER. And that later on would not have been very long. The railroad companies would have had their new schedules in short order if the Interstate Commerce Commission had made that kind of a ruling.

The CHAIRMAN. That would have compelled the railroads to adhere to their terminal rates, without increases, but would also have forced—

Mr. GARDINER. In other words, the Interstate Commerce Commission played right into the hands of the procrastinating policy of the railroads. They wanted to defer the operation of that fourth section as long as possible, and probably unintentionally the Interstate Commerce Commission played into their hands.

The CHAIRMAN. In view of the situation, do you not think it would be better not to make any reflections on the action of such distinguished bodies as the Interstate Commerce Commission in matters of that kind?

Mr. GARDINER. I did not mean it that way. I said "probably unintentionally the Interstate Commerce Commission played into the railroads' hands."

The CHAIRMAN. Do you not think it is quite possible the Interstate Commerce Commission took the view, as you seem to take and the intermountain people generally seem to take, that justice might require the raising of the terminal rates in case the intermediate rates were diminished?

The VICE CHAIRMAN. In view of what has been said here, I think it is only fair to the commission and to the country to remind the country of the fact that the commission has been overwhelmed with work for the last 10 years, and only recently have we afforded it relief by increasing the number of members so that they could do their work more expeditiously, and we hope for more rapid work in the future.

Mr. GARDINER. May I have your question repeated?

The CHAIRMAN. Mr. Reporter, please read the question.

(The stenographer repeated the question, as follows:

"Do you not think it is quite possible that the Interstate Commerce Commission took the view, as you seem to take and the intermountain people generally seem to take, that justice might require the raising of the terminal rates in case the intermediate rates were diminished?")

Mr. GARDINER. I think it is very probable that that is true, Senator. On the other hand, it seems to me that due reflection should have convinced the Interstate Commerce Commission that it would have been only fair to have possibly worked an injustice to the railroad companies for a few months, as an offset to the continued injustice practiced on the intermountain territory for years and years.

The CHAIRMAN. Do you not think yourself it would be more logical for them, instead of pursuing a policy that would have resulted in two changes, to act in such a way as to have but one change, provided, of course, that that could be done without undue delay?

Mr. GARDINER. No; I can not say that I do, Senator. The Interstate Commerce Commission in that opinion of June 30 found that it was unfair to the intermountain country to charge them the higher rates which they had been charged; and having found that, it seems to me to follow as a necessary corollary that it was unfair under any circumstances to continue charging them unfair rates, even while this leveling process might have been going on in the preparation of new schedules.

The CHAIRMAN. With reference to the decision of June 30, did that satisfy the reasonable expectations of the intermountain region?

Mr. GARDINER. I think that if that had been put into effect at once, and if the Interstate Commerce Commission had not changed its ruling, probably that would have brought relief to the intermountain country; that is, as I understand that decision.

The CHAIRMAN. Now, regarding the question of delay, of course seven years seems a very long time in which to accomplish the solution of this question, and I should like to know what the different stages were. The delay seems unreasonable. Now, will you let us know when the first suit or first application was made to put into operation the amended fourth section of the interstate commerce—

Mr. GARDINER. If I may, Senator, I would like to ask you to reserve that question and ask it of Judge Bartine, who has been all through that litigation and has it all at his fingers' end. I have not. I could

probably approximate that, but could not give you as full an answer as Judge Bartine can.

The CHAIRMAN. All I can say is that I wish to supplement what Judge Adamson has said in reference to the Interstate Commerce Commission, that it has been an overburdened commission for years, and Congress has only recently been able to agree upon some method of easing up its burdens by dividing it into three divisions, each one of which has as large jurisdiction as the commission itself. When that is carried into effect it will probably expedite the dispatch of business.

Mr. GARDINER. I agree with you entirely, Senator, that it has been an overburdened commission, and I believe a great deal of the work will be taken off the commission by the enactment of this ironclad long-and-short-haul clause. Then it will not have to worry about these different matters.

The CHAIRMAN. I say I am not disposed to inquire so much as to the reasonableness of why they granted this suspension order, which seems to me to have been entirely reasonable under the circumstances—I am not inclined to attach nearly as much importance to that as to the long delay between 1910 and 1917 in reaching a final conclusion, and I should like to have information upon that, but I will ask Judge Bartine regarding it.

Mr. GARDINER. Yes; I thank you.

The CHAIRMAN. Regarding the Panama Canal, you spoke of it as not offering any real competition. That is probably true of late, since the ships that went through that canal have been absolutely absorbed by the needs of the National Government in this war. You spoke of potential competition, but indicated that that, of course, is not as effective as actual competition. Of course, that must be admitted. Do you not think it should be the policy of the Government to see to it that that Panama Canal is made an effectual instrumentality for the transportation of goods from one coast to another, whatever its effect may be upon the traffic rates of the transcontinental railroads?

Mr. GARDINER. I think so, and that was the meaning I intended to convey when I spoke on that subject. Undoubtedly the idea of the Government was to relieve the congestion of the railroads, and that ought to be made a paying proposition to the Government.

The CHAIRMAN. That is all.

The VICE CHAIRMAN. Do you not think it is probable when war conditions have ended and the ships have been released from their present occupation that they will resume their traffic through the Canal, and the difference between active and potential use will disappear?

Mr. GARDINER. I certainly do, but as far as that has any bearing upon the position I have taken in relation to the intermountain regions, I feel, as I have explained myself heretofore, that the freight which will be carried in that fashion will be comparatively small, and even if it does deprive the railroads of a certain portion of their revenues, still that should be no reason for charging interior points any more than the coast points are charged.

The VICE CHAIRMAN. Still, we have a right to speculate and hope for other means of relief. In the enactment of the Panama Canal act, we who live in the interior thought we were providing for relief

for the interior; that we could ship through the canal and back several hundred miles into the interior, the Commerce Commission fixing the land portion of the charges, and we thought the railroads could keep pretty busy, or at least derive some business, hauling from the interior to the coast in order to supplement the sea route.

Mr. GARDINER. A reading of this opinion of June 30 would indicate that that is not going to be the attitude of the Interstate Commerce Commission; that when the Panama Canal competition becomes apparent again it will figure that it has the right and probably will let the railroads raise the rates to these intermountain points.

The VICE CHAIRMAN. I have no further questions.

Mr. SIMS. Now, section 4 as it reads under the amendment of June 18, 1910, states:

That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act; but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance.

That is the amendment without any qualification, that stating the substantive law, the object, and purpose of the act.

Mr. GARDINER. Yes, sir.

Mr. SIMS. Now, I want to ask this question, as what I have read is the law and should receive liberal construction in order to carry out the purpose of the law: In giving a liberal construction to the exceptions, instead of a strict construction, does not that have a tendency to prevent the accomplishment of the object and purpose that Congress had in view in passing the substantive law?

Mr. GARDINER. I think undoubtedly so. I think it is a rule of statutory construction that any statute remedial in its nature should be given a liberal construction and the restrictive clauses should be construed narrowly.

Mr. SIMS. Now, as to the provisos, it is provided:

That, upon application to the Interstate Commerce Commission, such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

Now, using the words "special cases" would indicate there must be something out of the ordinary; that it should not come within the general provisions of the amendment which I just read.

Mr. GARDINER. Yes.

Mr. SIMS. Inasmuch as they should be special cases, does it not seem to carry the idea with it that it should be expedited; that you should give a special case special consideration?

Mr. GARDINER. Certainly, it would seem to me so.

Mr. SIMS. Now, there is another proviso:

Provided further, That no rates or charges lawfully existing at the time of the passage of this amendatory act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.

Now, the railroads, or common carriers, by filing or making applications to have their rates that were lawful at the time this act passed continued—they can be continued by making an application “until the determination of such application by the commission”—in other words, the commission can not prevent the application having that effect?

Mr. GARDINER. No.

Mr. SIMS. The application has the effect of suspending the operation of the substantive law until the rate embraced in this application has been determined by the commission, and the fact that the commission did not determine these applications until, I believe you said, June 30, 1917, is not that the reason and the only reason why the amended act has not applied to cases where it otherwise would have applied?

Mr. GARDINER. I think that is the only reason.

Mr. SIMS. I have not seen the order of June 30. Did the order of June 30, 1917, that you have referred to, cover all applications which had been made, by which the old rate had been retained in effect?

Mr. GARDINER. I will have to reread that to be sure of it; I do not think it did. I know it referred to certain special commodities, etc. I do not think that that ruling of June 30 is broad enough to cover everything.

Mr. SIMS. After the application of the carrier, all that was necessary to happen in order to allow it to apply indefinitely the rate that was in effect was the nonaction of the commission. Now, I did not know from your language whether that order covered all applications made by the railway companies.

Mr. GARDINER. I do not think it did.

Mr. SIMS. Were there any cases where the railroads did not make application to continue the rate in effect at that time?

Mr. GARDINER. No; I think the railroad companies made applications covering everything. In every instance where they were charging more for a short haul than a long haul they made applications to the commission, and the commission made a blanket order in effect suspending the statute until they had made a complete investigation.

Mr. SIMS. Would they have to make any order at all? The carriers presenting their application suspended the application of the fourth section, did they not?

Mr. GARDINER. That may be true, but I understand they made an order also.

Mr. SIMS. In addition to this?

Mr. GARDINER. Yes, sir.

Mr. SIMS. You do not know whether or not all those applications have been yet passed on by the commission?

Mr. GARDINER. I am not positive about that. I would have to read that opinion very carefully.

Mr. SIMS. But the commission did, in passing on those embraced in the order of June 30, say which of these several rates on which applications had been made might remain as they were, or with such modifications as the commission determined?

Mr. GARDINER. It did not make this order in exactly that way. There was no order made under the opinion of June 30 fixing rates, but it said that the rates should be leveled or equalized, and it was

left to the railroad companies to do that and present their schedules to the commission.

Mr. SIMS. The railroads could equalize in these cases; they could level them by reducing the rates to the intermountain points or increasing the competitive water-terminal rates or by both?

Mr. GARDINER. Yes, sir.

Mr. SIMS. Do you know whether the railroad companies did make any application to be permitted to level these rates by making any increases of these terminal rates?

Mr. GARDINER. I asked for a copy of that last order. I asked Mr. Simmons, of our railroad commission, before I came down here to get me a copy of that order. I asked him that on last Wednesday. He was going over to Carson on Thursday, and I saw him Friday morning, and he told me he had been unable to get me a copy of the last order of the Interstate Commerce Commission, and consequently I can not answer that question accurately. My understanding of the situation is that, in effect, the order of June 30 is indefinitely suspended until the railroad companies shall prepare a new schedule and the Interstate Commerce Commission investigate it.

Mr. SIMS. Well, until the railroads themselves file a schedule increasing their rates, the commission has no jurisdiction to act, has it?

Mr. GARDINER. It practically means that the Interstate Commerce Commission has, so far as I know, suspended the order of June 30, pending the filing of rates. I personally agree with you that the law should be considered in effect, and if they have no right to raise their rates by this leveling process they should put the Nevada rates into effect immediately and raise the other rates afterwards.

Mr. SIMS. I am trying to find out how the law that the last extra session of Congress passed could possibly affect this order, whatever it was. If they had from June 30 until the law was amended—that is, the railroads had that time—to file the schedule of rates asking for increases in the present terminal rates, and did not file any such applications, then the only effect I can see of the recent act—and that act simply provided before a schedule of increased rates is filed it must have the approval of the commission—having had from June 30 until this law was passed in last September, having more than two months to file applications, and not having filed any, then I can not see how the act of Congress requiring that any schedule of rates before it can be filed must be approved by the commission—how that would suspend the action of the commission in the first instance requiring that the rates should be leveled either by raising the terminal rates or by lowering the Nevada or intermountain rates. I do not understand that.

Mr. GARDINER. I do not think, Mr. Sims, that the last act of Congress—I have not seen it, as the printed statutes have not come to us—but as I understand that act I do not see why that should have affected the order of the Interstate Commerce Commission or why the Interstate Commerce Commission should have modified or changed its order of June 30 at all. The railroad companies were able to comply with that order simply by putting into effect the terminal rates all the way through, and, as you say, before that act was passed they had about 60 days in which they could have com-

plied with the order, but which they did not do. However, that order of June 30—you have perhaps missed this—that order was to go into effect October 1.

Mr. SIMS. That was the effective date?

Mr. GARDINER. Yes, sir; that was the effective date; and, while I will not say it is corporate nature, still it is human nature to put off the evil day to the last.

Mr. SIMS. But the railroads are not prohibited from proposing an increase in their terminal rates now. The only thing is before they can file them they must be approved.

Mr. GARDINER. Very true. They are not prohibited from doing it, but they do not want to do it any sooner, as I understand it, than the Interstate Commerce Commission will make them.

Mr. THOM. That application has been made and a hearing is going on in New York now.

Mr. SIMS. I did not know that.

The CHAIRMAN. You say a hearing is going on now?

Mr. THOM. Yes, sir; in New York.

Mr. SIMS. I was without that information, which, of course, if I had it I perhaps would not have been so much surprised at the absence of action.

Mr. GARDINER. I know they had filed something, but I did not know what it was.

Mr. THOM. That is the first of a series of hearings; the first in New York and then in Chicago and then at other points.

Mr. SIMS. In other words, they have made applications for increases in rates?

Mr. THOM. Yes, sir.

Mr. SIMS. This fourth section, taking it with all its exceptions and giving it a liberal construction, with a view to carrying it out as the law was intended to be carried out, giving a reasonable and liberal construction with the substantive law and a strict construction of the restrictive clauses, I ask if it can not be administered in the interest of the public. I mean, is it necessary to amend this law in order to remove the evils intended to be removed, if it is administered according to the plain intent and purpose of Congress, as we gather from the face of the statute itself?

Mr. GARDINER. I should say, Mr. Sims, to the very best of my ability, that if that law had been administered by the Interstate Commerce Commission in that spirit we would have had the relief which we wanted, but the fact remains that we have not had the relief. We thought we were on the verge of it any number of times, but still did not get it, and whether we are any nearer to getting the relief which the spirit of that law awards us than we were 10 years ago I do not know.

Mr. SIMS. I do not mean to be understood as admitting what you say—I mean as to the inaction or improper action, or whatever it may be, of the Interstate Commerce Commission—I am not passing on that. I always assume that any great body of public officials have acted as they ought to until I know to the contrary.

Mr. GARDINER. That is a proper inference.

Mr. SIMS. I understand your idea is you have not gotten the relief you desired through the channels which have been provided?

Mr. GARDINER. Exactly.

Mr. SIMS. And in the absence of relief you feel it necessary for the development of your country to have the channels narrowed?

Mr. GARDINER. Let me put it this way: The railroads of the country knew well enough when that amended fourth section was passed in 1910 what it meant, and they knew well enough that special cases did not mean every case in which they claimed the right to charge more for a short haul than for a long haul, and knowing that they have fought us all the way down the line for the last seven years. There was a flexible law for their benefit, and if they had taken it in the spirit in which Congress passed it we could have had relief long ago and they could have had relief. But they were not willing to do it. They would not take the will of Congress as to their line of conduct at all, and my contention is that, having taken the attitude that they did regarding that law and having kept that law inoperative by their actions before the Interstate Commerce Commission and the delays they have drawn about it, they are no longer entitled to the sympathy of any discretion being imposed in the Interstate Commerce Commission, and that if Congress enacts a strict long-and-short-haul clause the railroad companies, not being satisfied with the spirit of the amended fourth section, have brought a rigid section upon themselves.

Mr. SIMS. Do you think the port towns or the coast towns having the benefit of the water competition—is it your opinion that the interests of these towns will object to having the intermountain rates reduced?

Mr. GARDINER. There is no doubt in the world that they will object, and the committee need only continue its sittings to find that answer. There will be representatives from commercial bodies of the coast towns asking this committee to leave well enough alone.

Mr. SIMS. That is a point I do not exactly appreciate.

Mr. GARDINER. The fight before the Interstate Commerce Commission has been participated in right straight along by the different commercial bodies.

Mr. SIMS. You do not mean to leave the inference that the port towns will contend that in order for them to live they have to have discriminatingly favorable rates?

Mr. GARDINER. I do not say that they will go so far as to say they have to have them to live, but in order to do as much business as they want to do they will insist on such discriminatory rates.

Mr. SIMS. They want to have better rates than anybody else that competes in the same field with them?

Mr. GARDINER. Exactly. I was just going to comment on the different appearances before the Interstate Commerce Commission in connection with this act here. Now, here is the Portland traffic transportation association represented; the San Francisco Chamber of Commerce represented—

Mr. SIMS. I can understand why they do not want their own rates advanced, but I do not understand why they do not want other people's rates reduced.

Mr. GARDINER. I will not take time to go through that, but bear that in mind, Mr. Sims, and see whether the representatives of these jobbers in these coast towns do not come before you and ask that the discriminatory rates against the intermountain towns be maintained.

Mr. SIMS. That is all.

Mr. ESCH. Do you believe in a town or community being permitted to enjoy natural advantages?

Mr. GARDINER. Yes, I do.

Mr. ESCH. The coast towns have natural advantages, do they not?

Mr. GARDINER. Well, the coast towns have natural advantages, and one would think that Reno had a natural advantage in being closer on railroads to centers of manufacture than San Francisco is on the railroads.

Mr. ESCH. Of course, each town that has natural advantages wishes to get the largest percentage out of those natural advantages. That is true, is it not?

Mr. GARDINER. They certainly do.

Mr. ESCH. That complicates the situation. You said that the water-borne traffic presented rather immaterial competition with the rail lines. Is that right?

Mr. GARDINER. Up to the present time it has.

Mr. ESCH. Do you not think, in view of the tremendous program of the Government in the matter of the merchant shipping, which at the end of 18 months might reach a tonnage of between nine and eleven million tons, that when peace comes there will be a tremendous amount of shipping needing employment, owned by the Government of the United States by its people; that it will increase water-borne competition between the coasts?

Mr. GARDINER. I do.

Mr. ESCH. It will not only be potential but actual competition, will it not?

Mr. GARDINER. When that time comes it will be actual.

Mr. ESCH. Are you familiar with the provisions of the act creating the Shipping Board?

Mr. GARDINER. No; I am not.

Mr. ESCH. Under that act, Congress has given to a board certain control over ocean rates, analogous to the powers granted the Interstate Commerce Commission over rail rates, and those powers, of course, reach the intercoastal rates. Do you not think, with the power thus granted, with the board already created, that competition between water-borne traffic and transcontinental rail traffic may be actual and not potential?

Mr. GARDINER. I think in the course of time there will be actual water competition on some commodities; yes.

Mr. ESCH. Of course we are not legislating for to-day only.

Mr. GARDINER. No; that is true.

Mr. ESCH. We are gathering information to guide us for some time in the future?

Mr. GARDINER. Yes, sir.

Mr. ESCH. We have to look at this proposition not from the standpoint of war alone but also from the standpoint of peace. So, those propositions being true, some of us believe that the water-borne traffic will be actual and that the traffic on the transcontinental lines will have to meet it. You think they should not meet it by increasing the intermountain rates?

Mr. GARDINER. I do not think we should bear that taxation.

Mr. ESCH. You believe, then, they must suffer this loss of the transcontinental business?

Mr. GARDINER. Yes; I think the way the transcontinental business is, that some of it can very well be taken care of on water, and I think that the railroads, by devoting some attention, not to fighting the intermountain territory but cooperating with the intermountain country, can get far and away more traffic up in that community, the revenue on which will compensate for any loss they may sustain on the transcontinental traffic.

Another thing I think is that there being a commission regulation of the water traffic and a commission regulation of the land traffic, that neither commission will see one form of transportation unduly suffer at the expense of the other.

Mr. ESCH. There is no doubt there will be cooperation between those two governmental agencies. There is no doubt about that.

Mr. GARDINER. No, sir.

Mr. ESCH. In trying to decipher a possible reason for maintaining a higher rate for the intermountain country than for the coast towns, this occurred to me as a possibility—and I know nothing about it—do you ship out more traffic than you receive at Reno?

Mr. GARDINER. No.

Mr. ESCH. You receive more than you ship out?

Mr. GARDINER. Yes, sir.

Mr. ESCH. That would result in the carrier hauling empties; and that is, of course, most uneconomic?

Mr. GARDINER. Well, I do not know how the transportation problem is on the coast. I do not know what empties have to be brought back. That is something that confronts a railroad to a greater or a less extent everywhere, and they have to watch for that and to a certain extent make rates in accordance with it. There is no doubt in the world about that. But I have never heard it urged that that was expensive enough to justify anything like—

The VICE CHAIRMAN. When I used to be a wagoner, if I could get a load both ways I could handle it much cheaper than handling it one way, and I suppose it is the same way with the railroads.

Mr. ESCH. I was trying to impregnate the situation with this thought—and I do not know whether there is any justification for it or not—suppose manufacturers produce and ship goods ordered to be delivered at Reno, and they are delivered at Reno, but Reno has no products to fill those cars to return them east, and hence they have to go east empty or be hauled 244 miles to the coast, over an elevation of 7,000 feet—

Mr. GARDINER. If the rates from the East into Reno and the rates from Reno out were different Reno would reship far more than it now reships. That would tend to overcome that objection, if that is an objection now.

Mr. ESCH. If your section were a large manufacturing section, of course there would be no doubt about your being able to ship back?

Mr. GARDINER. Yes, sir.

Mr. ESCH. But you are in a mining section, and your mines are silver and gold, and they do not make much freight.

Mr. GARDINER. There is not much freight in that line.

Mr. ESCH. Your main shipments are hay and bulk stock?

Mr. GARDINER. Not very much more than that.

Mr. ESCH. And your stocks go to the coast, or do you ship them east?

Mr. GARDINER. Yes, sir.

Mr. ESCH. Do you think in the matter of economic handling of car equipment on the transcontinental lines there is a measure of justification in increasing the intermountain rates over the terminal rates?

Mr. GARDINER. I do not think there is any measure of justification—no. There is another thing to be taken into consideration. We have been emphasizing in this question the matter of transcontinental rates, the west-bound rates. Now, in addition to that, as I have explained, San Francisco gets a rate from San Francisco into Elko of 77 cents. The rate from Reno is only about 12 cents lower despite that 7,000-foot climb, and the 244-mile haul to Reno. Now, if there are a great many cars going east and if the railroad company thinks that that is any element of consideration, why should it not make a rate out of Reno lower in order to pick up more goods and fill up cars instead of making that rate out of San Francisco so much lower? Does not the same condition apply? San Francisco is a territory which naturally takes in a great deal more than it sends out. If the railroad company is taking back empties from San Francisco, why is it that in order to fill up those empties it will let San Francisco ship to Elko for 77 cents and we can ship to Elko for only 12 cents less? You take it down to the last analysis and you will find it is a question of discriminating in favor of the cost jobber right straight along, and another thing, if you will take rate making in the last analysis, you will find that the jobber has more to say about rate making than the railroad company has.

Mr. ESCH. As far as this discussion has gone it seems to be largely connected with the jobbing trade and very little talk about manufacturing.

Mr. GARDINER. Well, the manufacturing end of it out in the West. I regret very much to say, has not the importance of manufacturing in the East.

Mr. ESCH. Of course, in the East, that is the dominant feature.

Mr. GARDINER. Yes, sir.

Mr. ESCH. There is another question that occurs to me. In the decision of the Interstate Commerce Commission in the Spokane cases—I think the cases in 1912—where Commissioner Lane filed a decision and the commission prescribed a zone system of rates, a blanket rate from the Missouri River to the coast and an increased schedule to the Atlantic—how would that have affected your country if it were put into force and effect?

Mr. GARDINER. That was put in effect on class shipments, more than it was on commodity shipments.

Mr. ESCH. Yes; I understand.

Mr. GARDINER. It helped quite a bit. If we had had that same proposition on commodity rates as well as class rates, then if the shipments out from San Francisco had been readjusted on a reasonable basis, we would have come to some approximation of being reasonably relieved.

There is one thing that occurs to me in connection with this discussion and in connection with these empty cars, and so forth. The railroad companies all presented to the Interstate Commerce Commission all the evidence and all the arguments which they have at their disposal, and the Interstate Commerce Commission in the face of that has said, in effect, that the intermountain rates are too high;

that they should be made to correspond with the terminal rates. We have, therefore, the decision of a duly constituted body that the rates should be lower. Our position is, For heaven's sake when? When—when is it going to happen? We have been at it so long, and it has not happened yet, and for that reason we do not know what will happen next, and we want to make this absolute by statute.

The VICE CHAIRMAN. There is one thing I should like to understand. Is the disproportion between what you ship in and ship out at Reno as great as at San Francisco?

Mr. GARDINER. I can only guess on that. That requires statistics which I can not give you, but I should imagine that it is.

The VICE CHAIRMAN. If it is, it desroys the argument about the number of empties going one way; that is, if the proportion is just as great.

Mr. GARDINER. Yes, sir; and yet they give San Francisco a lower rate eastward than they give us.

The VICE CHAIRMAN. Touching the importance of your section, in the matter of developing your region, I will ask you, in advertising the advantages of any place, if good railroad facilities and favorable freight rates are not about the best inducements you can offer to the investors and home seekers?

Mr. GARDINER. The question pretty nearly answers itself. I should say, yes, most emphatically.

The VICE CHAIRMAN. Good train service and good, favorable railroad rates might build up your country and make it as good as any other part of the country?

Mr. GARDINER. I think so.

The VICE CHAIRMAN. And redound to the benefit of the railroads that serve them?

Mr. GARDINER. Yes, sir; we begin to look upon the railroad companies as public benefactors. I do not want anyone to think I have it in for the railroads. I have not. The only quarrel I have is discrimination. That is the only one. I am on friendly terms with them.

The VICE CHAIRMAN. We would not dispense with them for any consideration in the world, and all we want them to do is to treat us fairly.

Mr. GARDINER. That is all; if they would just turn Christians and practice the Golden Rule, we would get along with them elegantly.

The VICE CHAIRMAN. But that would be unfashionable. However, it is not the corporations that are bad; it is the officers.

Senator CUMMINS I do not quite understand your application of the suggestion made by Mr. Esch with regard to loading both out and in. Suppose it is true that Reno loads more in than out, and San Francisco does otherwise, the car could be used better if carried on to San Francisco for its return trip; and if the car is unloaded at Reno instead of being carried on to San Francisco loaded, it would be cheaper to carry it empty from Reno to San Francisco to get its load back than to carry it loaded the same distance.

Mr. GARDINER. It certainly would.

Senator CUMMINS. I do not quite understand your suggestion that a condition of that kind might be some explanation for the discrimination in the rates.

Mr. GARDINER. I did not intend to offer that as my suggestion. Mr. Esch wanted to know whether or not that might not have had

some possible bearing, and my idea was that the railroad companies might claim that some such condition existed and might use that as an excuse for charging more; but what I said in addition to that was that if there are empties going back from Reno there are also empties going back from San Francisco, and they charge San Francisco a less rate, hauling over the mountains, than they do us.

Senator CUMMINS. I think there is a great deal of confusion about these proceedings before the Interstate Commerce Commission. I take it for granted that Judge Bartine from Nevada will give us an explanation of that. I would like it to appear in connection with your testimony, if it can be made to appear, or if it is true, that the fact is that after the act of 1910 was passed the railroads immediately made applications for an exception in every instance in which they had been charging more for the short haul than for the long haul.

Mr. GARDINER. Exactly.

Senator CUMMINS. And the Interstate Commerce Commission has been deciding those applications constantly ever since, has it not? There are many, many decisions since that time from those applications?

Mr. GARDINER. Well, if they have, and if they have affected the intermountain country, I do not know that. The only one——

Senator CUMMINS. I think in the main they have probably been granting them. I do not say they have affected the intermountain country, but it is true, is it not, that some time in 1916 the Interstate Commerce Commission passed on certain phases, anyhow, of the applications, so far as the intermountain country is concerned, and denied, in a degree, to an extent, the applications for the exceptions, and thereafter the railroad companies filed schedules advancing, upon certain commodities or certain kinds of traffic, their rates to the terminal points, and that brought about a complaint not only from the railroads but from many parts of the country, and the case that was decided on June 30, 1917, was an application upon the part of the railroads, or possibly others, too, to reopen the case that had been decided in 1916.

Mr. GARDINER. I think that is true. I think the 1916 case was one in which they asked for a rehearing which was granted—rehearing or reargument—but the 1916 order never became effective at all.

Senator CUMMINS. And then, on June 30, the Interstate Commerce Commission denied the application for the exceptions and insisted that the discrimination between the intermountain rates and the terminal rates should cease.

Mr. GARDINER. That is one effect of that order; yes, sir.

Senator CUMMINS. Is not the order in just so many words a denial of the application?

Mr. GARDINER. As I recall it in that case, they took up the application and they took up those various intermountain cases and decided them all in one, and they denied the exception and ruled that they should also level the rates.

Senator CUMMINS. Now, that order was to go into effect on the 1st of October?

Mr. GARDINER. Yes, sir.

Senator CUMMINS. And before that time arrived Congress had passed an act which prohibited the railroads from increasing a rate without the approval of the Interstate Commerce Commission, and

it left the railroads but one alternative in leveling the rates, and that was to reduce the intermountain rates?

Mr. GARDINER. Yes.

Senator CUMMINS. Now, unless the commission thought it had sufficient information to increase the terminal rates, that act—I mean the last act—expressly says that that approval of the increased rate may be, if the commission so order it, put into effect without a hearing. I have wondered in view of the long examination, extending over 10 or 12 years, of these rates, why the commission does not know enough about the subject to either allow them to increase the rate at the terminal points if they think it right—

Mr. GARDINER. I have had the same thought myself. I do not see why there is any necessity for a further hearing. All of that has been gone into.

Senator CUMMINS. I suggest these things to get the history straight in my own mind. I am very far from criticizing the Interstate Commerce Commission. I think it has been doing the best it can do in view of the volume of business it has to do.

The VICE CHAIRMAN. Did not Judge Hall and Mr. Clark, when they were before our conference committee, suggest that the time was rapidly approaching when they would be in a position to act instantly on these things without special hearings?

Senator CUMMINS. I have no doubt they had this in view when they said they knew all about these things and did not need any hearings to enable them to pass upon the question of raising rates or reducing them.

Mr. THOM. May I ask that the committee ask this question as a committee question:

Am I right in understanding that the real criticism which the witness makes is against the administration of the existing law, and that he is driven to a request for an amendment to the law by disappointment in the administration of the existing law?

Mr. GARDINER. Will you read that again, please?

Mr. THOM. Am I right in understanding that the real criticism which the witness makes is against the administration of the existing law, and that he is driven to a request for an amendment to the law by disappointment in the administration of the existing law?

Mr. GARDINER. I think the questioner is right to a certain extent in drawing this conclusion from what I have said: We are not satisfied with the way that the existing law has been administered. We are also not satisfied with the attitude which the railroad companies have taken toward the existing law. We feel that the existing law was plain; that any railroad company could have seen, on a casual reading of the law, just what Congress intended, and instead of cooperating with Congress for a speedy settlement of the difficulty which that law was designed to remedy, the railroads did all they could to delay the taking effect of that law; the railroads, by their own conduct, have invited a harsher and a more severe law, and their conduct justifies the enactment of just such a law to relieve the Interstate Commerce Commission from the burdens which have been imposed upon it by the railroad companies in their effort to escape a law which they knew must inevitably in the long run be decided against them, but yet were willing to fight through all these years.

The CHAIRMAN. Are there any other questions?

The VICE CHAIRMAN. I have nothing.

The CHAIRMAN. I received a telegram from the Spokane Chamber of Commerce asking that their hearing be postponed until Wednesday. What is the pleasure of the committee? If there is no objection, I will inform them that they can proceed on Wednesday.

The VICE CHAIRMAN. For one, I hope the witnesses who wish to appear will arrange things to appear as rapidly as possible, because we ought to wind up these hearings this week.

The CHAIRMAN. Have we a witness who is prepared to go on now? How about you, Mr. McCarthy?

Mr. MCCARTHY. I understood that to-morrow was the date set for me. I will be prepared the first thing in the morning. I am not prepared now.

The CHAIRMAN. Is there anyone from the coast terminal points who is ready to proceed?

Mr. MANN. If the committee pleases, the representatives of the coast cities feel that they are rather in the position of defendants inasmuch as they hold the opposite of the affirmative of the issue as far as this long-and-short-haul matter is concerned. The representatives of the intermountain points are asking for a change in the present long-and-short-haul law. We are desirous of hearing what they have to say, and when they have finished, our cities of the coast desire to be heard, and prefer to be heard in that order.

The VICE CHAIRMAN. Do you not think you have heard enough to enable you to reply?

Mr. MANN. We have not heard anything yet.

Senator CUMMINS. Would you be satisfied if the committee should close its hearings without hearing you? We might find ourselves in the position that the intermountain people will have taken up the entire time we can allot for these particular hearings.

The VICE CHAIRMAN. We do not care very much about plaintiffs and defendants. If you can tell us anything, I wish you would take the chair and tell us what you want to.

The CHAIRMAN. I suggest we go on with Mr. Troy, and to-morrow with Mr. McCarthy and then the Spokane Chamber of Commerce and that will conclude the hearing of the intermountain representatives. If there is no objection we will hear Mr. Troy to a conclusion.

Mr. SHAUGHNESSY. I submit at this point the aforementioned statement of Hon. Joseph L. Bristow on the Poindexter bill, S. 313, before the Senate subcommittee on interstate commerce, March 13, 1918.

STATEMENT OF MR. JOSEPH L. BRISTOW, OF KANSAS.

Mr. BRISTOW. Mr. Chairman, I could not state the matter any more clearly, I think, than I did before the Senate committee recently in the hearings on the railroad bill that was pending at that time, and I would like to incorporate as my statement in this hearing my statement in that hearing, found on pages 1053 to 1061, part 6. It states my position as clearly as I could state it now, and it is not very long, and if that could be simply made a part of this record I would appreciate it.

The CHAIRMAN. That will be done, and it will be printed as part of your statement.

(The matter referred to is here printed in full, as follows:)

STATEMENT OF MR. JOSEPH L. BRISTOW BEFORE SENATE COMMITTEE ON GOVERNMENT CONTROL AND OPERATION BILL S. RES. 171, PART 6, JANUARY 24, 1918.

Senator ROBINSON. It was the understanding the other day when you vacated the chair, Mr. Bristow, that Senator Poindexter desired to ask some questions.

Senator POINDEXTER. I did ask some questions before Senator Bristow left the stand, and my purpose in asking him to return was to give him an opportunity to answer those questions relating to the question involved in the thirteenth section of this bill, as to whether or not we are to fix a brief time limit, or whether or not we are to leave that undetermined.

My idea in asking the questions was to show some of the conditions under the present management of the roads.

Mr. BRISTOW. I will read a list of roads showing the per cent return applicable to common stock. I was requested to furnish a copy of the list to Commissioner Anderson in order that he might check it up. I have here copies of the list of roads and the authorities from which these figures were obtained.

(The statement referred to is here printed in full, as follows:)

Average rate of return upon capital and common stock for the 3-year period, 1915-1917.

[25 roads or systems, operating 112,000 miles in 1916.]

	Per cent of return applicable to all capital stock outstanding.	Per cent of dividends paid on preferred stock.	Per cent of return applicable to common stock.
Atchison, Topeka & Santa Fe System.....	9.67	5.00	12.33
Union Pacific System.....	11.44	4.00	14.76
Southern Pacific System.....	11.66		11.66
Chicago, Milwaukee & St. Paul.....	6.36	7.00	5.75
Chicago, Burlington & Quincy.....	25.16		25.16
Chicago & North Western.....	10.55	6.00	10.99
Great Northern.....	9.67		9.67
Northern Pacific.....	9.75		9.75
Minneapolis, St. Paul & Sault Ste. Marie.....	11.43	7.00	13.65
Chicago, St. Paul, Minneapolis & Omaha.....	9.35	7.00	10.74
Pennsylvania System.....	10.63		10.63
New York Central Lines.....	13.07		13.07
Baltimore & Ohio R. R.....	5.84	4.00	6.55
Reading System.....	11.64		11.64
Delaware, Lackawanna & Western.....	20.02		20.02
Lehigh Valley.....	11.31		11.31
Central R. R. of New Jersey.....	19.49		19.49
Delaware & Hudson.....	11.38		11.38
Illinois Central.....	10.82		10.82
Louisville & Nashville.....	16.14		16.14
Norfolk & Western.....	12.19	4.00	13.83
Atlantic Coast Line.....	10.48	5.00	10.49
Central of Georgia.....	9.91	6.00	21.62
Nashville, Chattanooga & St. Louis.....	12.77		12.77
Cincinnati, New Orleans & Texas Pacific.....	40.49	5.00	69.60
Average 25 roads or systems.....	11.21		12.02

NOTE.—The figures for the 8 eastern roads are taken from the exhibit filed by the carriers in the Fifteen Per Cent case (Ex Parte, 57). The figures for the A., T. & S. F. for 1917 are taken from the annual report of that company to its stockholders. For these 9 roads the figures are actual for the three years. All of the figures for the other 16 roads for 1917 are not available. For 1915 and 1916 they are taken from the exhibit filed by the Interstate Commerce Commission with the Senate Interstate Commerce Committee; and the net railway operating income for 1917 is taken from the same source, except that system figures for the Union Pacific and Southern Pacific are taken from reports to the Interstate Commerce Commission for various affiliated roads and combined into system figures. Whatever increase or decrease is shown in such net operating income from compared with 1916 for each road has been added to or deducted from the net corporate income for 1916, and the same amount of stocks and bonds outstanding as shown for 1916 has been used for 1917. Whatever error this method may develop is not thought to be sufficient to materially affect the result, as the figures are actual for the three years for 9 roads and for the other 16 roads they are actual for two of the three years and to a considerable extent for the third.

Mr. BRISTOW. I made the statement that I thought the Missouri Pacific Railroad, upon the basis of compensation provided, would have a deficit and that it would not furnish it with a sufficient revenue to pay the interest on its bonded debt. Upon further inquiry I find that its return for 1917 was so much better than for 1916 and 1915 that it would have a small surplus after paying the interest on its bonded indebtedness. I also stated that the M. K. & T. would not have sufficient. I find upon examination that the M. K. & T. would have, taking the three years, \$491,000 as surplus over and above the interest on its bonded obligations that might be applied to the payment of dividends on \$76,000,000 of stock, so that the return would be a small fraction of 1 per cent.

I have here a list of some of the roads which under this compensation rule provided would not have a sufficient return to pay interest on their bonded obligations.

(The statement referred to is here printed in full, as follows:)

"There were several roads which did not earn interest charged in the fiscal years 1915 and 1916, for which no figures have been published for the fiscal year 1917. Among such roads are:

	Miles.
International & Great Northern-----	1,159
San Antonio & Aransas Pass (bonds are guaranteed by Southern Pacific)-----	724
Duluth, South Shore & Atlantic (controlled by Canadian Pacific)-----	603
New Orleans, Mobile & Chicago (formerly owned by Frisco and Louisville & Nashville)-----	402
Trinity & Brazos Valley (formerly controlled by Rock Island and Colorado Southern)-----	357
Colorado Midland-----	337
Louisiana Railway & Navigation Co.-----	350
Missouri, Oklahoma & Gulf-----	333
Tennessee Central-----	283
Kansas City, Mexico & Orient-----	738

and several other lines operating less mileage."

Mr. BRISTOW. The International & Great Northern, which I believe is a Texas road, 1,159 miles in length; San Antonio & Aransas Pass, 724 miles in length; Duluth, South Shore & Atlantic, 603 miles; New Orleans, Mobile & Chicago, 402 miles; Trinity & Brazos Valley, 357 miles; Colorado Midland, 337 miles; Louisiana Railway & Navigation Co., 350 miles; Missouri, Oklahoma & Gulf, 333 miles; Tennessee Central, 283 miles; Kansas City, Mexico & Orient, 738 miles; and there are several other lines that would not.

As to the inquiries made by Senator Poindexter, as I understood the Senator, one was in regard to back hauls—

Senator POINDEXTER. And the other in regard to the suppression by the railroads of water competition?

Mr. BRISTOW. Yes. Just what phase of those two questions the Senator wanted me to discuss was not exactly clear. I suppose by back haul you refer to what is commonly known as the effects of the long-and-short haul controversy. See if I get your point.

As it is now, or as it used to be, and I understand it is yet, on a car-load of merchandise, for instance, the rate from Chicago to Spokane would be a fixed amount; we will say, for illustration, \$1 a hundred. From Chicago to Seattle, beyond Spokane, would be the same.

Senator POINDEXTER. No. That is not it, Senator.

Mr. BRISTOW. Oh, excuse me. It is, we will say, from Chicago to Seattle \$1 per hundred, and from Chicago to Spokane it is \$1 plus the rate from Seattle back to Spokane.

Senator POINDEXTER. That illustrates the principle. There are some variations from that, sometimes more than that and sometimes less, but the phase of the question that is relevant to this inquiry and that I intended to ask you about was the amount of unnecessary transportation involved in that system in the double haul to Seattle and back to Spokane, instead of putting the goods on at Spokane or in making the rates based upon that.

Mr. BRISTOW. Senator, I think the fundamental difficulty that has been developed as a result of that system is in the congestion of terminals. As a matter of fact, the merchandise is not hauled, except in exceptional cases, from Chicago to Seattle and back to Spokane. It stops at Spokane and the railroad collects the same rate from the shipper at Spokane as it would have collected if it did carry it on to Seattle and brought it back again.

Senator POINDEXTER. In the majority of cases, of course, the system develops a great depot at Seattle, with resulting shipments back of a certain percentage of the supplies of the interior country.

Mr. BRISTOW. I will illustrate this by citing the situation in and around Kansas City, because I am so much more familiar with it and I can illustrate the idea. The rates in this country have been made so as to congest the industries in certain commercial centers. They have basing lines and certain points to and from which rates are made. The result of that at Chicago and Kansas City and at other similar points is that a large quantity of the merchandise is congregated there, and then it is distributed from there.

Great industries are built up there by an artificial rate-making system that otherwise would not have been built up in these centers if the rates had been normal and based upon the service rendered.

There are some large packing houses at Kansas City. It is a great traffic center. Some 25 or 30 years ago I remember when there were small packing houses in other points near Kansas City. Those have all been put out of business practically, and the business has been centered in Kansas City, where the big packing houses are located, and that was done by a system of railway rates, making low rates into Kansas City, sometimes a less rate into Kansas City from where the live stock grew, out in western and central Kansas, than to the intermediate points. And then the rate on the dressed product from Kansas City back to the points of consumption would be the same as if the articles had been shipped from points between the point of consumption and Kansas City.

The result has been, as I said before the Newlands committee, every steer that grows in central or western Kansas makes a trip or two to Kansas City and back during his life. He may be born out in western Kansas in the grazing region, and when the producer of this animal sells him he may not be a feeder. He wants to sell him to somebody who buys cattle and feeds them but does not grow them. A carload or a trainload, as the case may be, of these young cattle is gathered up and sent to Kansas City, and there the producers buy them and ship them back, because that has been made the market. That shipment may be 100 miles; it may be 300 miles into this market. It has been made the market by a system of rates that are inequitable and, I think, unjust. This buyer will purchase his carload, or a number of carloads, in Kansas City, and they are shipped back to be fed.

I have known them to go back into the same county where they were shipped from and fed and then shipped to Kansas City for butcher, and sometimes they are bought by dealers there and finished in another way in the process of producing the higher grade meats, and they are shipped out again to a feeder somewhere, and then ultimately back again.

This system has been developed because it creates business—transportation business. The railways are in business for profit, for gain; and, like any other business institutions, if they can develop business that is profitable they desire to do it. If they can so arrange their rates and their schedules as to create profitable business, why, it is to their commercial and financial interest to do so; so the centering of the business that I am now discussing, in Kansas City, so as to get this movement of live stock, and then the shipment of the products—the manufactured meat, the dressed products—back into the country 50 or 100 or 250 or 400 miles, as the case may be, creates a higher and better paying business.

Senator POINDEXTER. Let me ask you there what you mean by "business"? Do you mean transportation business?

Mr. BRISTOW. Yes; it gives them more profit out of the business. It develops transportation business for the carriers. Now, that system has prevailed throughout the United States, and it has resulted in the creation of a lot of unnecessary business, because it pays the carriers to handle it.

There have only been a few periods in the history of transportation in the United States where the railroads have had more business than they could do. We seem to be in one of those periods now. There have not been many of them. They have sought, in my experience, always to develop all the business they could.

I think that the system of rate making which has resulted in this congestion of business in certain great terminals, at the expense of the smaller commercial communities, has been very unjust, and we passed, as Senator Poindexter remembers, some years ago an amendment to the interstate commerce law known as the long-and-short-haul clause, or section 4, to stop it.

It has not been successful yet, because, unfortunately, the Interstate Commerce Commission has not enforced its provisions as was expected that it would, and if it had been effective and the principle that is outlined in that legislation had been applied, a great deal of the congestion which we now have would not exist.

I might illustrate this in many other ways. What I have said in regard to live stock simply illustrates the system, and it is applied to many industries. I remember when we had a paper mill at Lawrence, Kans., that was doing a very prosperous business with about 200 employees; it was bought by a syndicate, or concern that was engaged in the purchase of these things, and ultimately junked because the rate system made it more profitable for them to manufacture the paper, which had been manufactured there or some other central point.

So that the whole system, as developed, has been looking toward the creation of long hauls as against short hauls.

Taking it in my own town—or in my own community, I should say—McPherson is 35 miles south of Salina, Kans. We have a number of wholesale grocery houses in Salina, Kans. The Union Pacific

runs from Salina to McPherson. The Santa Fe runs from Salina to McPherson, but to ship from Salina to McPherson over the Santa Fe the merchandise must be carried from Salina to Strong City, a distance, as I remember, of about 80 or 90 miles; and from Strong City is taken by the Santa Fe to McPherson, a similar distance. I may be somewhat mistaken in these miles, but it will make a movement of that merchandise of at least 150 miles, while if it was shipped over the Union Pacific it would go 35 miles on a straight line south.

Now, the Santa Fe has made rates to meet the Union Pacific rate between Salina and McPherson, and it carries that, or it used to, I do not know whether it does now or not, since the cars have become in such demand, but it used to set a car out at Salina so many times a week to be filled with merchandise to be shipped to McPherson, and that car would be carried this 150 miles, and the Santa Fe would receive the same rate as the Union Pacific would if it had carried it 35 miles.

Yet it charged all intermediate points that were farther than 35 miles a higher rate than it charged at McPherson. It charged the mileage rate on all intermediate points, but when it got to McPherson it met the short-line rate.

Now, as I understand, Senator, what you have in mind that these long hauls which may be denominated back hauls, are unnecessary and undesirable, and it is a waste of transportation energies.

Senator POINDEXTER. An economic waste; and I desire to point it out as one of the great and important conditions that we are dealing with here, what to do with these railroads necessarily involved in this bill, as one of the results of the present system, and furthermore, that it bears upon the question of just compensation to the railroads when being taken over. I do not want you to take time now to go into that, but answering your question as to what I had in mind. They have the right to consider whether or not the system of compensation at present is based upon a reasonable method of transportation or system of transportation.

Mr. BRISLOW. I am free to say, Senator, that I think that the system is entirely wrong, and that it should be corrected; and while I do not want to criticize the Interstate Commerce Commission or in any way minimize the great work that it has done and the many abuses it has corrected, I think it has been delinquent in the enforcement of the statute provided to break up just such conditions as this.

As to the development of waterways I desire to say that I think that the greatest evil that has come from this imperfect and unwise system of rate making has been the destruction of water transportation. I do not believe that water competition should be a factor in the making of railroad rates. I believe that the Interstate Commerce Commission ought to be required to disregard water competition in the making of railroad rates.

The railways, by lessening the rates on competing water points, reducing them to a point where the water carriers could not accept the commerce and handle it, and then make up the loss, if loss there was, or penalize the communities that were not on water by excessive rates, have destroyed water competition.

If that had not been permitted, this Government to-day would not be required to spend a billion dollars to create a merchant marine. The system of rate making which has been recognized by the Ameri-

can people and recognized by the Interstate Commerce Commission has destroyed the American merchant marine absolutely.

Senator POINDEXTER. Will you point out briefly how that occurs?

Mr. BRISTOW. Whether there may have been some slight changes in rates the last year or two I can not say, as I have not examined them for a year or two. But, to illustrate, formerly and comparatively recently the rates on products from California, we will say dried fruits or canned goods, to Galveston over the Southern Pacific Railroad were the same as they were to New York. That is, the Southern Pacific Railroad would carry a carload of California products to Galveston for the same rate that it charged if it carried that same carload on to New York, so that any steamship line that was seeking to do business between Galveston and New York could get no business unless it belonged to a railroad. The Southern Pacific, in order to control the rates, acquired the control of a steamship line, and it made the rates over the railroad and its steamship line to New York the same as it did to Galveston. And I know that steamship owners who sought to develop a business by water between these ports, Galveston and other Gulf ports to New York, were unable to do so because the railway rates were so adjusted that unless they were under the control of a railroad they could not get any business.

There was at one time, you gentlemen will remember, a transcontinental railway pool which controlled the rates between the Pacific and the Atlantic coast ports of the United States. This transcontinental railway pool acquired control of the Panama Railroad & Steamship Line, and it paid at one time approximately \$1,000,000 a year for the privilege of controlling the rates via Panama, which was afterwards reduced. And then, after a congressional investigation, that pool was destroyed or abandoned, and the Southern Pacific interests acquired the Pacific Mail Steamship Co.

Senator KELLOGG. When was that?

Mr. BRISTOW. John R. Fellowes, I think, was chairman of the committee that made the investigation; I think in the eighties, but the date has slipped my mind.

The Southern Pacific Railroad interest then acquired the Pacific Mail Steamship Co., and it made a contract with the Panama Railroad Co., under the French régime, that gave it the exclusive right of through bills of lading between Atlantic and Pacific coast ports, and by that process water competition with the transcontinental railroads between the two coasts was controlled. There were then sailing vessels that competed by way of Cape Horn, but the distance was so great that of course the competition was not affected.

By processes of this kind, that have been indulged in by our railroads on the ocean, between our ocean ports on the Atlantic and the Pacific coasts, there are dozens of illustrations of a similar character that could be cited whereby the carriers, under the guise of meeting water competition, of reducing rates between ports in order to meet water competition and destroy it, have made it impossible to develop a coastwise merchant marine anything like it would have been if the rates had not been so used to destroy this competition.

Take the Mississippi River. I made an investigation some years ago, and I discovered that the rates, as I cited to the Newlands committee, between Memphis and New Orleans on bales of cotton was 17 cents per 100 pounds. That is 450 miles, approximately. The rate

from Meridian, Miss., to New Orleans, 196 miles, was 36 cents per 100 pounds, more than twice as much as between Memphis and New Orleans, a distance of 450 miles, or more than twice the distance and less than one-half the rate. That was justified upon the ground that the Memphis-New Orleans rate met water competition, and therefore it was allowable, while the other was a reasonable rate for a rail haul.

Now, the result has been that the great amount of transportation by water that existed on the Mississippi River many years ago has disappeared, some of it because railroad transportation is more speedy and more efficient for certain lines of merchandise that need prompt movement; some of it because—most of it because the rates were reduced below the profit line by the railroads in order to destroy this competition, the competition of independent steamboats.

Senator POINDEXTER. And the railroads making up the difference upon the intermediate points?

Mr. BRISTOW. Upon the intermediate points that did not have the opportunity of water competition.

Senator GORE. Then they used to raise the rates after they destroyed water competition, did they not?

Mr. BRISTOW. Oh, surely. After they destroyed the competition why they would sometimes raise the rate, and then if competition appeared again they would again be reduced. I know there was a boat line established between New Orleans and either San Francisco or Los Angeles some years ago, that sought to do business by way of Panama, and the Southern Pacific reduced the rates between New Orleans and the Pacific coast so low that this boat line that was started only lasted some two or three months, and then when it was destroyed, the men engaged in this enterprise were broken up, the rates immediately went up, so that no man with any judgment that did not have money to throw away would undertake to establish a steamship line in competition with a railroad line between points that the railroad could reach. And this system of rate making has resulted in preventing the development of the American merchant marine, inland as well as on the seas, and we have got this crisis now in our national history that nobody ever anticipated, but which is chargeable more to this unjust and selfish, and I think indefensible system, of fixing the railroad rates in our country than to anything else.

Now, Senators, if there is anything else you wish to inquire I shall be glad to answer you.

Senator GORE. Senator, what would be your solution of that? How would you adjust the rates as between New Orleans—take those now before the canal was constructed; what would be your plan?

Mr. BRISTOW. I think if a railroad company fixed a rate to New York of 50 cents per 100 pounds on canned goods, a distance of 3,000 miles, from points in California to New York, that the Interstate Commerce Commission would have been justified in fixing it for 1,500 miles, say, at 30 cents, upon the presumption that that was comparatively a fair rate for that portion of the service that it would have resulted in fair and constant rates.

Senator GORE. You think freight ought to have gone by water that could go by water and that by rail which could go by rail?

Mr. BRISTOW. Yes; they even absorb. I know of steel shipped from Pittsburgh to New York and loaded in boats in New York and shipped around to San Francisco by Panama, or around the Horn, and the railways would adjust the rates on these same commodities from Pittsburgh to Pacific coast points so as to meet that competition utterly disregarding the cost of the movement, and American railways have transported millions of tons of heavy commodities across the continent at rates that could not be remunerative in order to prevent steamships that could have carried at remunerative rates. Anyone familiar with the struggles of steamship lines on the Pacific coast, the American Hawaiian Line, which had a contract with the American Sugar Refining Co. for sugar at Hawaii to be transported to New York and other points, must be convinced that the principle that is embodied in the long-and-short-haul legislation some years ago was vital to the best interests of the country, and if it had been followed in the spirit with which the legislation intended that it should be the American merchant marine would have been very much better than it is now.

I do not think water competition should be considered a factor in determining the reasonableness of the rate for the service rendered. Whether they have got to make an unreasonably low rate in order to destroy some other legitimate transportation company or business that is just as essential to the American welfare as the railroad is certainly is not a justification for extremely low rates.

The CHAIRMAN. Have you concluded, Senator?

Mr. BRISTOW. I have.

Senator GORE. There is one other question that I would like to ask, Mr. Chairman. The clause in the law as to substantially similar circumstances, you think that ought to be stricken out?

Mr. BRISTOW. That was stricken out in the legislation that was last enacted, but the Interstate Commerce Commission was given permission, after examination, to make exceptions, and that has been so construed that while that law was passed some six or seven years ago, it is not effective yet.

In this connection, I will say that the fact that this hearing is necessary is somewhat interesting, and clearly indicates that the executive officer that construes a statute may be much more effective as a lawmaker than the legislators that enact it. I was in the Senate at the time that this measure, section 4, was enacted, and I believe, Mr. Chairman, that you were in the House at that time—

The CHAIRMAN. Yes.

Mr. BRISTOW. I do not think there was anyone in the Senate who believed that the plain meaning of the words, as expressed, would be so contorted as to result in the administration of the statute as has been done. It clearly indicates that when an exception was made to the long-and-short-haul provision it should be upon a hearing by the Interstate Commerce Commission and a specific action by that commission, and the practical effect is that it is not effective in any particular until a hearing is had and an order making it effective is made. That is the practical effect of the statute, which is exactly the reverse of what was intended by everyone who understood it at the time.

The fact that a hearing like this is necessary in order to correct an abuse that has been standing from almost the beginning of rail-

way operation, after two efforts have been made to correct that abuse—one, the original provision in the bill which contained the words, “under like conditions,” and according to the construction of that language, why, there never were like conditions, and the statute was of no effect; and, then, the last phraseology by which, after very careful deliberation, it was thought to correct the evil, but it seems it has not—it seems to me that there is just one way to make it effective and that is to make it absolute so that no exceptions can be made.

It is with some hesitation that I have come to that conclusion, because I believe it would have been better to have administered the statute as it plainly indicates it was intended that it should be administered, so that exceptions could be made where there were valid reasons for such exceptions, but I am convinced that that will not be done, and since that will not be done, I see no way of remedying this evil and manifest injustice in our transportation system, except by a rigid statute.

I do not think there is anything else that I can say, and the incorporation of my remarks in the other hearing will cover the case so far as I am able to discuss it.

The CHAIRMAN. I would like to ask you one question, Senator Bristow. I do not know whether you have examined into the matter or not, but I would like you to indicate in a general way, somewhat in outline, because I realize that the details would be very voluminous, to what extent, geographically, is this country affected by this discrimination of higher rates for the short haul than for the long haul?

Mr. BRISTOW. I am not very familiar with the rates in the eastern half of the United States. I have been advised that so far as the local rates in the eastern territory are concerned, there is no such discrimination, but in the central and western part of the United States it affects almost every community.

The CHAIRMAN. How about the South?

Mr. BRISTOW. I think the South is just as bad as the central part. I know in our State it has been almost universally a discrimination. Our commission has had a case pending before the Interstate Commerce Commission for three years now. They finally got a decision that did not enforce the statute, but was an improvement over existing conditions, and that decision was not three months old until, upon application of the carriers, it was reopened and is still pending. I think the discrimination is almost universal. I know it is in the central part of the United States.

Senator POMERENE. Some years ago a prominent manufacturer in Cincinnati advised me that he had had customers in Denver and on the coast, and that in order to ship to Denver he found it cheaper to ship to the coast and have it doubled back to Denver. Now, are you genius enough to explain that to my satisfaction?

Mr. BRISTOW. Senator, that can not be explained. There is a flimsy theory that has been offered as an excuse for it: but that is the best term I can use in describing the evidence that has been submitted.

Senator POMERENE. You are more mild than usual.

Mr. BRISTOW. Well, I appreciate the dignity of the presence I am in, and must not indulge in the language that ordinarily I ought to. Now, is there anything else, Senator? I think it is universal. There

is not a small community in the United States that does not suffer as a result of this discrimination, and there are a vast number of large communities that are at the mercy of those that are still greater.

The CHAIRMAN. I think in your previous statement—I was present when you made it—at the hearing on the Government control of railroads, you there went into the effect of this discrimination on water transportation.

Mr. BRISTOW. I did; and I made the statement there, and I am very glad to repeat it now, that if it had not been for this discrimination against the water carriers, the Government would not now be required to spend \$1,000,000,000 to create a merchant marine. You can take, and the gentlemen here representing the Pacific coast can cite many instances where water competition has been destroyed and ships driven off the sea and off the rivers by the crushing competition of the railroads for the distinct purpose of destroying that facility of transportation, and they have destroyed it. There is nothing in the history of American commerce that is so scandalous, in my opinion, as the toleration of the system that has resulted in the destruction of our merchant marine, and any man who will study the methods that have been resorted to in the past to drive water traffic off the rivers and the seas must come to that conclusion, if he studies it from an economic point of view, instead of from an interested point of view.

Senator POMERENE. Senator, Senator Henderson here has suggested a question. He is too modest to put it himself, because he is not a member of this committee, and that was, if you have not already explained it, to explain how this discrimination prejudices the small buyer and the small community in the interior, etc.

Mr. BRISTOW. Senator, that is illustrated in some examples I gave in my former hearing.

Senator POMERENE. You mean before the House committee?

Mr. BRISTOW. No; before the Senate committee, which, by the consent of the committee, I make a part of this statement; but I will illustrate it by repeating an illustration that is found there, because it is so close to me and I am so familiar with it, and it so clearly illustrates the injustice of the system. My home is Salina, Kans., a small town in the central part of the State, about 15,000 population. Some gentleman came in there some 20 years ago or more to establish a small grocery house. It is 186 miles west of Kansas City. The rate on sugar from the Pacific coast to Kansas City at that time was 50 cents 100 pounds, if I remember accurately.

Mr. SHAUGHNESSY. Fifty-five cents.

Mr. BRISTOW. I was not certain whether it was 50 cents or 55 cents—55 cents per 100 pounds. Sugar shipped from San Francisco to Kansas City, by the way of the Union Pacific, would pass through Salina en route to Kansas City. The rate from San Francisco to Salina was the rate to Kansas City plus the local rate from Kansas City back to Salina. The local rate was 29 cents 100 pounds.

Senator POMERENE. From Kansas City to Salina?

Mr. BRISTOW. From Kansas City to Salina; so that this gentleman, while his sugar never went to Kansas City—the car would be switched at Salina and unloaded into his warehouse. He was compelled to pay 29 cents and 55 cents, which is 84 cents. I think, Mr. Shaughnessy, that at that time it was 50 cents. It is 55 cents now,

I think, but it is not material as to what the exact figure was. It was the sum of the two; so that he was paying 84 cents a hundred pounds for sugar unloaded at his warehouse, that came there from San Francisco, while his competitors at Kansas City were paying 55 cents a hundred pounds, and when it came to distributing that to the local dealers, why it was impossible for him to meet the Kansas City competition.

Senator POMERENE. That is, Kansas City could come into Salina's market and take it, and the Salina merchant could not go to Kansas City and take their market?

Mr. BRISTOW. No; he could not hold his own market, as a matter of fact. He was an aggressive business man and he started out to fight that discrimination and injustice. I was editing a little paper there at the time, and he came to me and explained it to me. That was the first information I had in regard to this phase of our transportation system, and, of course, those of us living in that section of the State that are suffering this discrimination are indignant, and were indignant and we helped him in every way that we could. He told me afterwards that it cost him \$5,000 to try that case, through all of the stages through which it went, and finally he got the Kansas City rate to Salina from the west, but he did not get any reduction below the Kansas City rate, but from the east he was required to pay the Kansas City rate, plus the rate from Kansas City to Salina, so that it corrected it as coming from the west, but he got no equitable adjustment for traffic that was moving west.

There is not a small community in the United States that has undertaken to establish an industrial or commercial enterprise, against a powerful industrial center that has not met the same unjust methods and had to struggle against the same unjust conditions, and it is to correct this abuse which, in our section of the country has been universal, that these amendments to the interstate commerce law have been made, and after eight years' struggle, when we thought it was corrected, we find ourselves here now with practically no progress made. There has been some, but very little.

The CHAIRMAN. Senator, have you recurred in your previous statement to the aspect of this case that involves a waste of effort and a waste of transportation facilities, in the unnecessary length of hauls, and violation of economic laws generally?

Mr. BRISTOW. I think I covered that quite well, Senator. I referred to some local movements in the State of Kansas that illustrate it very clearly. Wheat and merchandise from my own town to other points.

Senator POMERENE. Have you finished your answer to the Senator's question?

Mr. BRISTOW. Yes, sir; I have.

Senator POMERENE. It has been suggested to me by Senator Henderson—I understand the statement has been made by certain public officials—that in view of the fact that the Government has taken charge of these railroads, therefore there is no necessity for this legislation. I wish you would just express your views on that subject.

Mr. BRISTOW. Well, I think the legislation should be enacted, Senator, because I think the Government—that is, the executive branch of the Government—ought to have rules and laws prescribed by the legislative branch, directing it how to administer the affairs of the country.

Senator POMERENE. Even more than that, Senator. I am addressing myself to that particular objection. It is not sound for this reason, that assuming this first report may become the law and the President is given the right to initiate rates, the final fixing of the rates lodges with the Interstate Commerce Commission, just as it did before.

Mr. BRISTOW. Yes; that is true, of course, and this rule would be prescribing the rule for the commission to follow in the determining of these rates, but, Senator, I believe it ought to be prescribed for the Executive to follow as well. I see no reason why a thing that is so manifestly right as this should not be fixed as any provision of law should be fixed.

Senator POMERENE. Well, if the rule is a sound one, why of course it ought to apply to everybody who has to deal with the fixing of rates, unless there is some military reason that I do not know anything about now. There may be something of that kind.

Mr. BRISTOW. I take it for granted that a military necessity supercedes all commercial restrictions of any kind, and it is so understood, and there is not anyone that does not think it ought to and would not be willing to incorporate any provision in the statute that permits it, because a military necessity goes to the life of the Nation, and everybody says and admits that that should be supreme and superior to any commercial necessity.

Senator POMERENE. It can hardly be said, or at least I can not see how it could be said, that any military necessity would justify a discrimination.

Mr. BRISTOW. I do not think it does, Senator. If that is offered as a reason, it is offered because it is believed to be an effective argument and not a reason.

Senator SHAFROTH. Have you ever heard a justification for charging more for a short haul than for a long haul over the same line in the same direction?

Mr. BRISTOW. I never have, Senator. I do not think there is any. Mr. Shaughnessy has asked me to repeat somewhat the experience I had when I was special commissioner of the Panama Railroad: Under the Roosevelt administration I was appointed as special commissioner of the Panama Railroad, to investigate its relation to the commerce of our country, with a view of recommending what should be done, and it was during my service in that capacity that I became familiar with the gross discriminations that existed in the intermountain country, and in that report which I made to the Secretary of War, who was then Mr. Taft, afterwards President, I set forth in detail quite extensively a number of the discriminations. I referred to that in the hearing before this committee briefly, and while I do not want to repeat it, if any of you gentlemen are especially interested, you can get the report that I filed with the Secretary of War at that time, or if any of you desire, I can have it sent to you, wherein I discussed at length the situation, so far as it affects the Pacific coast and the intermountain region and the Gulf ports.

Senator SHAFROTH. I wish you would send me one.

Mr. BRISTOW. I would be glad to do that.

The CHAIRMAN. At least, Senator, I would like you to give the reporter a reference to that document, so that it can be easily identified.

Senator POMERENE. Was it printed as a public document?

Mr. BRISTOW. Printed as a document. Now, the number, etc., I do not remember, but its general style is "Bristow's Report as Special Commissioner of the Panama Railroad," and it was filed in August, 1905, and the Isthmian Canal Commission has, I think, a number of those yet. I have some of them at home that I can send you gentlemen.

Senator POMERENE. How long is the report?

Mr. BRISTOW. The report proper is about 100 or 150 pages. The book contains a large number of exhibits that are quite interesting.

The CHAIRMAN. I understand a portion of it relates specifically to this question of the effect of the long-and-short-haul administration?

Mr. BRISTOW. To the methods used by the transcontinental railroads to destroy water commerce by the way of Panama. It embodies a report that was made by John R. Fellows, as the head of the congressional committee, away back in the eighties, I think it was.

The CHAIRMAN. I would like very much to have those parts relating directly to this question incorporated in this record.

Mr. BRISTOW. I will send you a copy of it, Senator, and mark the parts that relate to this specific subject.

The CHAIRMAN. All right, sir.

Mr. BRISTOW. And if it is desirable, you can have it incorporated in the record as a part of my statement.

The CHAIRMAN. Very well.

Senator POMERENE. Mr. Chairman, may I ask, Has this bill been submitted to the Interstate Commerce Commission?

The CHAIRMAN. I am not sure that it has, Senator. It should not require doing that, for the reason that the whole question has been before the Interstate Commerce Commission for about 20 years. It has been argued back and forth, and they have made a great number of decisions and reports on the subject covered by the bill.

Senator POMERENE. I would like to have their observations concerning this matter.

The CHAIRMAN. I will ask the secretary of the committee to ask them for a report on it.

Senator POMERENE. Yes; all right.

Senator SHAFROTH. I think that it has been referred to them, although I do not know whether recently. I know I have had a bill before the Senate for a number of years; even when I was a Member of the House 20 years ago I had a bill, but did not make any progress on it.

Senator POMERENE. Could you not get that bill through in 20 years?

Senator SHAFROTH. Could not get it through in 20 years.

Mr. BRISTOW. Was there anything further, gentlemen?

The CHAIRMAN. That is all, Senator. Much obliged to you.

Mr. SHAUGHNESSY. I submit at this point the aforementioned statement of Hon. F. A. Jones, chairman of the Railroad Commission of Arizona. Mr. Jones was for many years engaged in railroad service in the capacity of assistant traffic manager on western lines reaching the Pacific coast, and he, therefore, speaks from intimate knowledge regarding the theory and science of rate making.

STATEMENT OF MR. F. A. JONES, OF THE ARIZONA CORPORATION COMMISSION.

Mr. JONES. The Arizona Corporation Commission is a body created by our constitution.

The CHAIRMAN. What is your home address?

Mr. JONES. Phoenix; State capital. I am chairman of the commission. I represent, of course, our State commission and the people of Arizona in this matter and in other matters of this kind, and before the Interstate Commerce Commission in matters relating to the fourth section. In the West I have heretofore appeared for New Mexico State Commission, for certain commercial organizations on the west slope of the Rocky Mountains, Grand Junction Chamber of Commerce, Montrose-Delta Counties Freight Bureau, and also for the Interior Counties Freight Bureau of southern California.

I have been a member of the State commission since Arizona was admitted to statehood, six years ago. For the five years prior to that I represented State commercial organizations in Arizona, who were then seeking to bring about a modification of the freight-rate situation, with particular reference to the fourth section. For some years prior to that time I was continuously and actively engaged in railroad work, mainly in traffic departments, and divided between intermediate or interior points and terminal points on the coast. My experience covers something like 30 years, varied, as I have stated, a part of which has been, and the greater part of which has been, in positions where I have had to do with the making of rates and meeting the conditions that are being discussed.

The first effort of Arizona to bring about a rate adjustment of freight rates was a case brought by the Shippers Union of Phoenix, in 1898. That case, by the way, while an opinion was rendered by the Interstate Commerce Commission, was left undecided. They found the facts to be that the rates to Phoenix were some 200 or 300 per cent higher than to the more distant coast points, but did not give them relief, stating that those conditions had long prevailed; that it would upset the traffic map of the world, and that they had other cases under consideration and would reach disposition of that case later. That was the last of that case. Just about 10 years after that, or in 1908, I was engaged by the commercial organizations of Arizona to institute proceedings, and, without knowing of similar action on the part of Reno and Spokane, we filed our complaint, and from that time to this time I have been rather intimately associated with the litigation before the courts and the Interstate Commerce Commission.

I should like to say, in connection with this long-and-short-haul proposition, that I made a statement at some length before the Newlands committee in San Francisco. It will be found in part 13, commencing at page 468. My observations there are confined almost exclusively to the long-and-short-haul situation.

The CHAIRMAN. At that point, in order that there may be no misunderstanding about it, Mr. Shaughnessy spoke this morning about desiring to incorporate in this record some portion of the statements made before that joint committee. I don't know whether he understood what I said in response to that. I suggested that care be used not to duplicate the printing of unnecessary matter, but within

reasonable limit and what you consider vital portions of that testimony, I have no objection, and I do not think Senator Myers has, of incorporating it with your statement now.

Senator MYERS. No; I have no objection.

Mr. JONES. If I may be allowed later, then, to offer those portions for inclusion here.

The CHAIRMAN. Yes; you may submit it.

Mr. JONES. That will shorten up my statement somewhat. The defense of these higher intermediate rates on the part of the railroads has always been based upon water competition. That has been carried through periods where the water competition was nil, periods when it was controlled absolutely by the railroads through ownership of steamship lines, and at all times, in every case, that has been offered as a defense.

In 1908 the railroads then attempted to defend all of the rates to all intermediate points, undertaking to justify higher rates. That was irrespective as to whether the commodities were seagoing or not, and you will recognize, of course, that there are a great many commodities that can not be shipped by water on account of their perishability or their peculiar character. For instance, some oils and explosives and acids are prohibited by the tariffs of the steamship lines on account of the hazard.

The CHAIRMAN. Has there been a lower rate to the Pacific-coast terminals allowed on the basis of water competition for those goods?

Mr. JONES. Yes, sir.

The CHAIRMAN. Notwithstanding the fact that they are not allowed to go by water?

Mr. JONES. Notwithstanding that fact. Notwithstanding the fact that in 1908 we called the attention of the Interstate Commerce Commission specifically to the prohibitions in the tariffs of the water carriers, and we were still charged rates from 50 to 100 per cent higher on such commodities. I am making that statement to show you that we can not tie ourselves up or rely upon the statements of our railroad friends in this matter, because their position has not been consistent. There are certain shipments that on account of their character and size could not be shipped by water—thrashing machines and other shipments of a delicate nature—but on all such shipments the practice in effect, up to 1910 and 1912, was to charge the interior higher rates, and that was all the time defended on the basis of water competition, which, of course, was a fallacy.

Another feature in connection with the fallacy of the provision of the carriers in the terminal rates, was the fact that in the past, and until quite recently, they have accorded inland points in California terminal rates—points not located on the sea—and have refused to accord points located on the sea terminal rates. For instance, in southern California, Los Angeles, 20 miles from tidewater, has always had terminal rates. San Pedro, to which the water-borne traffic moves, was denied terminal rates. It can not be sustained. The position can not be sustained that this practice has been built up on sound traffic or transportation conditions.

The CHAIRMAN. You mean to say that water-borne freight whose destination was Los Angeles, passing through San Pedro, and there overland to Los Angeles, and at Los Angeles was given terminal rates and that San Pedro was not?

Mr. JONES. That was exactly the case for many years, until San Pedro complained of that condition a very few years ago. There were some approximately a hundred points granted terminal rates. Possibly five of those points were where ships actually landed. San Jose had terminal rates. It has been spoken here of the period when the merchants of San Francisco attempted to drive the railroads into line, in getting better rates, by putting on what was known then as the clipper line of ships. About that time the Southern Pacific then threw a trench of terminal rates around the San Francisco Bay. At that time I was in California and knew something of the transportation conditions there. The proposition was that to punish San Francisco for her efforts in furthering water transportation they would give this cordon of inland points terminal rates, so that the inland points might redistribute and handle their business by rail.

The CHAIRMAN. You don't mean to say that the railroads, having derived all of this benefit from water competition, actually did not want any water competition?

Mr. JONES. In that case they went to considerable length to annihilate it, and did annihilate it. It cost the merchants of San Francisco a great deal of money directly. Indirectly they may have profited through getting what they were after. Commercial conditions in the past, up to at least the time of the opening of the canal, were the conditions that controlled the terminal rate situation. Now, there has been a good deal said about westbound rates. There has not been much said, if anything, about eastbound rates. The rates from California points into Arizona, say, for a distance of 400 miles—for a 400-mile haul, on almost all commodities, is as high as the rates on the same commodities over the same line, through those points to Kansas City and to Chicago. Formerly they were higher, but we did get—by some effort we did get an ironing out of this inconsistency in eastbound rates.

Something has been mentioned about hides and wool. We submitted a case to the Interstate Commerce Commission and showed that our rate on wool was \$2.75 a hundred from Arizona points, a large wool-producing State, to Boston, and the rate from California was \$1, at a time when there was no forcible water competition. The rates on hides are just about the same proportion. You could ship hides from Phoenix to Los Angeles, reconsign them to Milwaukee, on a less rate than you could ship them direct from Phoenix to Milwaukee. That was in deference to the people who assemble these shipments in California and agreed that if that assembling rate was made they would ship their business over particular lines that may have interested themselves in making those rates. I simply call attention to those facts to show what we have contended with in the past and to show also that the situation has been that the railroads have attempted to defend, absolutely inconsistent, and their position has not squared with the facts.

The CHAIRMAN. Let me ask you just one more question on that point: How is water competition involved on rates from interior points to Pacific coast terminals, say, from Cincinnati or Pittsburgh? I understand—I may be mistaken about it—that certain low rates are made from Pittsburgh or from Cincinnati to San Francisco on the ground that there is water competition. How does the water com-

petition come in on that trip from Pittsburgh or Cincinnati to San Francisco?

Mr. JONES. It was claimed by the carriers, and I think in a few instances it was shown—we always felt that those were forced instances—that shipments have moved as far west of the Atlantic seaboard as Chicago, by rail to the Atlantic seaboard, then by water through the canal to Pacific coast terminals, at rates approximating, or, in some instances, a little less than direct rail lines, and they have attempted to justify blanketing the rates throughout the East, from points, say, east of the Mississippi River, on that theory, but the facts are that the business in the East, the manufacturing institutions and the big commercial houses, have been strong enough to compel a leveling of rates in that territory; that is to say, Detroit is going to insist upon having as low a rate as New York, and New York as low as Detroit, and the result is the rates have been blanketed there, and that is another point in support of my statement that the conditions have been artificial to a great extent. There has never been a time in my railroad history, covering 30 years, where the lines in the East have set forth the same argument, or attempted in any way to charge higher rates from the interior than from the seaboard. If Spokane could properly be charged a higher rate than Seattle on westward-moving traffic, then certainly Pittsburgh or Buffalo or Cleveland ought to pay higher rates than New York City.

The manager—the traffic manager—of the Pennsylvania lines testified in Chicago before the Interstate Commerce Commission in one of these cases that the lines in the East had never contended for that, and in his opinion the principle was wrong, and another feature connected with that is the fact that but few lines participate in those excessive earnings, or what we call the back-haul revenue. Those are the lines west of Ogden and west of El Paso. For illustration, a carload of canned goods would move from Waterloo, Iowa, to Los Angeles on a rate of \$200 a car. If that was dropped off in Phoenix the rate would be \$300 a car. The Rock Island line, east of El Paso, which might participate in that haul, got the same revenue, whether the car was destined to Los Angeles or Phoenix. The Southern Pacific took up the hundred dollars as their proportion of the revenue. If there was good reason why the rates should be higher to the interior, or if there was any reason why the rates to the terminal were insufficient, then you would find the lines east of these points contending for their share of the additional revenue, and they have never appeared in any of these cases with any such contention.

Another feature connected with that that will appeal to you is the rates applying on products coming from a territory remote from water transportation. Take corn or corn products from the corn belt. That principle has been applied on such products; that is to say, a higher rate has been charged the interior, notwithstanding, as we all know, that the bulk of that traffic, if not all of it, moves from the corn belt—wheat or flour. We paid for years \$1.12 a hundred on flour from Kansas, when a rate at the same time was in effect over the same line, through those points, of 65 cents to the terminals. Of course, the production of flour is limited to a great extent to the wheat belt. I never heard of any in my traffic experience being shipped from the Atlantic seaboard, or from any point east of St. Paul; that is, to the West.

The CHAIRMAN. Was it claimed that this low rate to the terminals was justified by water competition?

Mr. JONES. That was the claim, and then when you would run down some particular commodity and try and get someone up in the corner on that, they would fall back on market competition. For instance, the rate on potatoes was always higher from Oregon or California to Arizona than to Chicago, for one-third the distance. They would say this: "You don't raise potatoes in Arizona. They raise lots of them in the vicinity of Chicago; that is market competition." But they justify that high scale of rates in the inter-mountain district.

At the time I spoke of, in 1908, the rates, for illumination, on a certain commodity—on iron pipe—would be 80 cents from Pittsburgh to Los Angeles, and the rate from Los Angeles to Phoenix would be \$1.18, fifth-class rate. Our rate would be \$1.98, and those rates were defended with just as much vigor as this situation to-day is being defended.

Now, as a further illustration that the conditions are artificial, there are certain commodities controlled by certain big interests that have not been subjected to these high rates. This is particularly true on copper products that are produced extensively by big interests in Arizona. They have always had the same rate from those points that apply from points farther west, and on things entering into their production—on coke and on certain smelting machinery they have had approximately the same rate. So it all goes to show that it was a fictitious situation that existed, and if an institution was strong enough, they might bring around somersaults; but, as I say, we have been working continuously for 10 years, and as has been stated here, the result we have got has just been a dent in the general situation—a piecemeal—and we never got what we think is anywhere near justice.

Now, in making rates from the East to the West, and from the West to the East, there are certain defined territories that all rate men are familiar with, starting in at Missouri River and common points; Mississippi River and common points; Chicago, Detroit, and common points; Buffalo-Pittsburgh, and the Atlantic seaboard. Five territories, with a line drawn north and south through the map. The rates are stepped up as the distance increases, or down, as the case may be. We contend that that condition should prevail in the West. That is not a forced condition in the East. It is a condition brought about voluntarily by the railroads, the result of the combined wisdom of all of the railroad men there, in making those territorial divisions, and we are now contending for rates no higher than to the Pacific coast, and we still maintain that they should not be as high where distance is any measurable factor, and distance is a factor at Spokane, Reno, Phoenix, and Salt Lake City. There should be that graduation. Our progress has been very, very slow and very unsatisfactory in dealing with the Interstate Commerce Commission in these matters. I have presented cases to the Interstate Commerce Commission for the Montrose and Delta County Freight Rates Bureau, where we showed absolute violations of the fourth section. We showed the rankest kind of discrimination. We showed a violation of every part of the act to regulate commerce,

and we got no relief. Those records are open to anyone for inspection.

There have been some statements made here, and I think possibly the ground has all been well covered, as to the necessity of building up our waterways and the conditions that the carriers have found themselves in in the past year or two through an expansion of business. The railroads have jumped from one thing to another in an effort to straighten out affairs by placing embargoes upon certain lines or upon certain kinds of freight. That whole situation could be relieved very greatly if the country would encourage water competition instead of discouraging it, and the attitude of the Interstate Commerce Commission has been to discourage it by saying to the railroads, "You may make rates unduly low, unreasonably low, for the purpose of taking business away from the water lines." It is a position that I can not reconcile with common sense.

In response to a suggestion or request from a member of the Interstate Commerce Commission for cases where the railroads were doing back hauling, so called, cross hauling, or performing circuitous routes, I prepared some maps, and these maps are marked with footnotes, showing those matters. I have also had laid out in here by our rate department, in a manner that is indicated on the map itself, lines showing the absurdity of this long-and-short-haul proposition, and if I may, I should like to leave those with the committee. They are self-explanatory to a certain extent.

The CHAIRMAN. They may be printed as a part of your statement.

(The maps referred to are not published in this volume.)

Mr. JONES. Now, the one that I have indicated in pencil as map A shows that from New Orleans to San Diego the route is open in the tariff and traffic is solicited and carried over lines involving 3,362 miles, when the short line is 2,000 miles. This is not an extreme illustration. I have others, but on the same map, in dotted lines, will be shown the route over which traffic passes to a considerable extent from Chicago to a point in Texas, and that is indicated here as Pyote. Now, the distance from Chicago to Pyote is 1,492 miles by that line, which is somewhat circuitous. It is not the most direct line. The rate to that point in Texas on electrical appliances, in carloads, is 85 cents a hundred. Now, to a point on the main line of the Southern Pacific is mid-Arizona, Tucson, the distance is 2,070 miles and the rate is 90 cents. That rate is then reduced when it reaches San Pedro, a distance of 2,523 miles, to 85 cents, and then it is blanketed clear across the United States—from San Pedro to Portland, Oreg.—at the same rate, which involves a haul of 3,694 miles. In other words, we are paying for 1,492 miles more than the short-line mileage.

Now, the other maps show a great deal greater disparity—show more circuitous routing. This shows what a waste there is in the present transportation situation. In one instance, on map B, the rate on structural steel and iron from Pittsburgh to Warfield, Tex., is 90 cents for 1,900 miles; to California it is 90 cents for 3,076 miles. There is 2,100 miles intervening there that takes higher rates. To Tucson the rate is \$1.05, 15 cents a ton higher on structural steel, and the remaining maps show a similar situation.

We have come to this conclusion after a great many years of effort, that there is just one solution of this situation, and that is a rigid long and short haul law. If the railroads can carry traffic in competition with water lines, let them have it at reasonable rates. Let our coastal friends have the benefit of the water transportation and whatever rates they can secure. Let us have in the interior what we deserve by reason of our location and our shorter haul. Let us have a graduated scale of rates, similar to the rates which are made in the East. That, of course, is beyond this proposed amendment to the act. I do not think, gentlemen, there is anything further. The ground has been very well covered by Mr. Campbell, and there are others here who will cover certain features of it. I do not think I need take any more of your time.

Mr. WOOD. May I ask Mr. Jones a question?

The CHAIRMAN. Yes; give your initials and address and what interest you represent.

Mr. WOOD. F. H. Wood, general attorney and commerce counsel of the Southern Pacific Co. at New York.

The CHAIRMAN. It might be better if you would sit up here at the table.

Mr. WOOD. Mr. Jones, in connection with your closing remarks about what you feel is the solution of this problem, it has been the contention of the railroads, has it not, that if they were compelled to apply at all intermediate stations rates which were low enough to enable them to compete with the ocean carriers at the coast, it would result in such a low level of rates within the intermediate country that their entire earnings would be endangered. Has not that been their position?

Mr. JONES. They have contended that; yes, sir.

Mr. WOOD. That is what I am asking you. That has been their contention?

Mr. JONES. Yes, sir.

Mr. WOOD. Now, assume that that is so, for the sake of argument, and that there is a rigid long and short haul provision, and the railroads must elect whether they will retire from this business to the coast cities, or whether they will make these reductions in all of their intermediate rates and refuse to retire from the business to the coast. then how will that traffic get to the coast?

Mr. JONES. Well, of course, that is not a practical proposition.

The CHAIRMAN. Let me make a suggestion here, and I would like the advice of Senator Myers in regard to it. This hearing will go on for some time, and this method of procedure is of some interest. It might be well to have an understanding in regard to it. Ordinarily, where you have witnesses and cross-examination, and all of that, there are counsel on each side who are necessary regulators, and it would be impracticable at a hearing of this kind, where we haven't definite rules of evidence and counsel on each side, to go to the full length in that regard, and I would like to make this suggestion, if you will pardon me, that it seems to me that it would be proper to cross-examine, if you choose to use that term, a witness about matters that he has testified to, and of course that is the limit of cross-examination anyhow. As to arguments and questioning him as to your viewpoint and your side of the case, that has not come out in his testimony, I doubt the advisability of presenting it in that

manner. I think you should have full opportunity to present it, but I scarcely think that it is proper cross-examination.

Mr. WOOD. I thought I was starting with the witness's concluding statement, Senator.

The CHAIRMAN. I just make that suggestion. I will leave that matter with you. You want to confine it within some reasonable limit.

Mr. WOOD. Yes; I shall try to do that.

Mr. JONES. Of course, your question is based upon a condition that will never arise. The railroads will never ask or expect to go out of any business. The great bulk of the business and the profitable business of the carriers of the Pacific Coast States, is perishable, which can not and never has been, at least, carried by water. In my opinion the carriers will not go out of any business, and I base that statement upon my past experience in the matter of rates, where, as a rule in the past, the railroads have taken the initiative in making rates and the water lines have followed them. That was departed from, Mr. WOOD, as we know, when the Panama Canal was opened, but the steamship lines stated, and I think they stated in a session before the Interstate Commerce Commission, that they themselves made rates that were much lower than they could afford to maintain, but the conditions of the railroads to-day, where they can not haul the traffic, and the Southern Pacific especially has had an embargo on their Sunset-Gulf route for a long time. If they would lose 25 per cent of their traffic, they would not lose any more than they have not been able to carry, by reason of that congested condition.

Mr. WOOD. I understand. We are talking about after-the-war conditions, in large measure, in this discussion.

Mr. JONES. Well, of course, we have got to consider the future. We hope that, and I believe that the traffic of the country is going to continue to grow. I do not believe that the extraordinary movement of traffic is due to the war conditions, but to the natural expansion of business.

Mr. WOOD. Then I understand that your attitude is based in part upon the assumption that if these two alternatives were presented, the rail carriers would never go out of the business to the coast?

Mr. JONES. They will never go out of the business.

Mr. WOOD. But if they should, and the business should then be carried by water at water rates, you would not be any better off, would you, in your competition with the coast than you would be if it was carried by the railroad companies to the coast, at water rates? Your position would be the same either way.

Mr. JONES. I am inclined to think the interior would respond in the way of increased production, so that the railroads might terminate in the intermediate district, and possibly in time give up lower rates than they are now giving us. Those things have happened.

Mr. WOOD. Now, you made some statements to the effect that this theory of water competition was a fallacy, and that the contention of the railroad companies has not squared with the facts. Beginning with the hearings just before the opening of the canal and ending with the recent hearings of the Interstate Commerce Commission, has the commission had before it, not only the records of the railroad

companies but the records of the steamship companies as to the business they carried and the extent of their competition?

Mr. JONES. I do not know just as to what extent they have the records of the steamship companies. I assume they have access to the records of the railroad companies that they have control over. They have not control over the steamship lines.

Mr. WOOD. The representatives of the steamship lines appeared and made their presentation of the facts.

Mr. JONES. There were some appearances of the steamship men. They originally appeared with the railroads in these matters, as you know, and later they abandoned the railroads, after the canal was opened. At least, they didn't abandon the railroads, but they found that their interests were not with the railroads and had taken an independent position.

Mr. WOOD. And they came in and testified as to the condition of their business and the condition of the competition with the railroads, did they not, in these cases?

Mr. JONES. I would rather the record would speak for that, but I think your statement is true.

Mr. WOOD. And you came in and presented your views and theories, did you not, at length?

Mr. JONES. Well, at as much length as we were able to.

Mr. WOOD. And we came in and presented ours at length?

Mr. JONES. Yes; at considerable length.

Mr. WOOD. And the commission made certain findings, and those findings supported the contentions of the railroads as to the extent and severity of the water competition?

Mr. JONES. That is exactly why we are here.

Mr. WOOD. In other words, you think the commission can not properly be intrusted to determine those questions of fact, and that is why you want the power removed from them?

Mr. JONES. I think history will sustain your statement.

Mr. WOOD. I think that is all I care to ask, Senator.

The CHAIRMAN. Well, I would like to interpolate there on my own account in the record, that I regard it largely as a matter of determining a policy, rather than as a decision of any set state of facts.

We will take a recess until 10 o'clock to-morrow morning.

(Thereupon, at 4.45 o'clock p. m., the committee adjourned to meet at 10 o'clock a. m., Thursday, March 14, 1918.)

TESTIMONY OF HON. F. A. JONES, CHAIRMAN RAILROAD COMMISSION OF ARIZONA, BEFORE NEWLANDS COMMITTEE, AT SAN FRANCISCO, NOVEMBER 1, 1917.

Mr. JONES. My name is F. A. Jones, and I am chairman of the Corporation Commission of Arizona; my residence is Phoenix.

The VICE CHAIRMAN. Very well; make such statement as you desire, sir, in your own way.

Mr. JONES. Gentlemen, I am here somewhat in response to a suggestion from Senator Bristow, of Kansas, received just before I left. I think possibly the suggestion was due to the fact that I have been chairman of an Association of Intermountain States, organized several years ago for the purpose, particularly, of following up the fourth section matter as related to the intermountain country. Since

coming here and hearing Mr. Thelen's statement—having read carefully his statement made in Washington—I feel that I might shorten my testimony or statement by indorsing his in toto.

As I read Mr. Thelen's statement made in Washington, it showed a great deal of study and thought, and was not only fair but very comprehensive and complete. There are some features of the problems under consideration which confront the country which I do not think he discussed. One of them is what we now term the intermountain-rate situation. My statement is based upon about 30 years' experience, gained largely in being connected with transportation lines in a traffic capacity, for the last 10 years equally divided as State commissioner and as representative of commercial organizations seeking to bring about a readjustment of the situation that confronted them in the intermountain district in relation to the fourth section.

Senator CUMMINS. Will you make that a little more definite? I suppose we all understand that, but the record might be made a little clearer if you would state what the fourth section is. You mean the fourth section of the interstate-commerce law, which relates to the long and short haul rates.

Mr. JONES. Yes, sir; I first became intimately connected with those problems 10 years ago, when in a measure Spokane and Nevada and Arizona had filed complaints attacking the intermediate rate situation. Ten years have elapsed and we have had no definite decision. Orders have been entered and suspended, and we are to-day practically where we were 10 years ago in so far as the rate situation is concerned. I am not saying that in a spirit of criticism against the Interstate Commerce Commission, but merely stating it as a fact.

In those days, when that case was first presented to the Interstate Commerce Commission, every rate through our section in Arizona was higher by the addition of the local rate from the nearest terminal point back to the point, resulting in our rates being in some instances 300 per cent higher for a 500-mile shorter haul than to the terminal points. In the first presentation of that case that condition prevailed as to rates on all commodities, perishable and non-perishable, whether subject to water competition or not. The railroads in those days attempted to defend that situation just as vigorously as they are now defending a modified system of higher intermountain rates. They abandoned the proposition that all commodities should have that rate, and through later adjustments have given the intermediate sections rates on perishable and nonseagoing commodities as low and in some instances lower than the terminal cities.

Now, that brings the situation up to a solution of their difficulties. We had hoped that when Congress amended the fourth section of the act, permitting the commission, in its discretion, to permit carriers to charge higher rates to intermediate points than to terminals, we would have some solution of that, based upon that principle. Since we have had no solution and no decision, we have almost come to the conclusion—and I am speaking officially for our commission and the Intermountain States—that the solution of that situation is a rigid long and short haul law, and that goes to the question I have heard a member of this committee ask as to the re-

lation of rates that may have been due to the development of water transportation.

The transcontinental carriers have in the past controlled the rate situation to the coast, either through the ownership or partial ownership of boat lines, or by making unduly low rates and driving independent boat lines off of the sea. The records of the Interstate Commerce Commission are complete in that respect, so that it seems to me that if the country wants to see water transportation developed that an application of the long and short haul principle would go far in that direction.

Now, if I may, I want to be permitted to say a few words with respect to the State and interstate regulation where it apparently overlaps and has been brought into conflict. I am somewhat familiar with the Shreveport case—that is, my familiarity goes through a careful reading of the opinion of the commission and of the court in that case—and that has always appeared to me to be a case deserving the consideration of the Interstate Commerce Commission, but growing out of that there has been brought about by, I might say, the collusion of the carriers a condition where State rates have been adopted unfairly and unjustly, and the records of the Interstate Commerce Commission will likewise bear that out.

I am in favor of State regulation, but my mind is open on that subject. It seems to me, gentlemen, that it would be a physical impossibility for a Federal commission to do what the State commissioners are now doing. Ninety per cent of our work, I think, is what we term informal, where a shipper or cowman or farmer or merchant comes to us informally and explains a condition where he would be entirely unable to present his case to the Federal Government on account of the expense and lack of knowledge of procedure. Those are disposed of, and usually we find no opposition on the part of the carriers to meet us and dispose of them informally. My statement that the Interstate Commerce Commission could not well handle that work is based on an experience I had in Arizona in handling the traffic of a commercial organization under Territorial days. While we were a Territory our intraterritorial affairs were handled subject to the Interstate Commerce Commission, as you know. In 1910 an association complained of certain local rates, and our case was presented, and we believed the case was made. Up to this day there has been no decision rendered upon that case. Why it has not been rendered we have not been informed, but the facts are there. Of course, the case is unreported, but these cases can be identified on the records of the commission. The case was continued along in a way until Commissioner Lane got on the commission, and I personally took the matter up with him, and at that time, after five years, it appeared we were going to be a State pretty soon, and Commissioner Lane said: "With those local matters out there your State can better deal with them, and I think we had better pass the matter up until your State commission is organized and gets into the cases." The matter was left in that shape.

I have just been advised that Judge Bartine, of the Nevada commission, will be here Monday, and I am going to assume that before your hearings are closed you will have a very full exposition of the long-and-short-haul situation as related to the Intermountain States. There are representatives here from Utah, and I think Utah repre-

sents Idaho, and I will not dwell upon that subject. I think Judge Bartine is probably more able to present it than I am.

I do not think of anything else that I care to present, gentlemen.

Mr. ESCH. Under the original fourth section, prior to the amendment of 1910, the language inserted in that section was "Under substantially similar circumstances and conditions." Those words were omitted in the amendment of 1910.

Mr. JONES. Yes, sir.

Mr. ESCH. In your opinion, was that amendment wise or unwise?

Mr. JONES. In my opinion that amendment was wise, because the construction the courts have placed upon "Under similar circumstances and conditions" was so broad that there could be no similar circumstances and conditions.

Mr. ESCH. In other words, through the courts the fourth section was rendered nugatory?

Mr. JONES. Yes, sir; absolutely.

Mr. ESCH. So Congress eliminated those words in the amendment of 1910 in order to give vitality to the section. Do you concede the justice of the commission permitting lower rates—transcontinental rates—to your Pacific seaboard than to the intermountain section?

Mr. JONES. I think under present conditions that it is entirely unjustified.

Mr. ESCH. Now, why? Go into that.

Mr. JONES. In the first place, the railroads can not now take care of the business offered them, and in that connection, if I may be permitted—

Mr. ESCH. Of course, I do not want you to consider this wholly under war conditions, you understand. Under present conditions the roads are congested, it is true, but suppose there were no war conditions. What would be your view?

Mr. JONES. My view is that the fourth section could well be rigid with respect to the intermountain traffic. Take a representative point, if you please, in the intermountain district. Take Reno, Nev., or Salt Lake City farther east, or Phoenix, and consider that the haulage from that point to the terminals is over mountains and deserts and ranges from 500 to 1,000 miles, it is my idea that any rate that would be compensatory to the terminal, it would appear to anyone would be amply compensatory to the intermediate point. Now, there may be conditions arise where the abrogation of the fourth section, or a modification of that, would be justified. That would be possible where two lines of carriers serve the same point, one having a circuitous line and the other a direct line and the circuitous line wanting to participate in that traffic. That presents to my mind a different situation.

Mr. ESCH. How tense is the competition just now?

Mr. JONES. The commission found, and the facts are, that there is no water competition now. There has not been any water competition for possibly two years, and the testimony of the larger water carriers was in substance to the effect that when it was it was their experience that they then had, notwithstanding the carriage through the canal, that the railroads would probably never have been confronted with the low scale of rates they first made. It seems to me that the railroads are placing themselves unnecessarily in a very inconsistent position—the transcontinental carriers—when they go to

the Federal commission or State commissions and ask for increased revenue to-day and for two years they have been sacrificing millions of dollars of revenue on intermountain and terminal rates that they claim are subnormal, unreasonably low, for no good reason that has ever been stated. There is a big slack there that can be taken up in the way of revenue, and discriminatory rates, being perpetuated against the interior could be eliminated to the great advantage of the interior.

Mr. ESCH. Is the Pacific Mail entirely separated from the Southern Pacific?

Mr. JONES. I understand it is.

Mr. ESCH. Of course a great deal of the Pacific shipping has been sent to the Atlantic, and that has led to a suspension of the competition between the Panama Canal and the transcontinental lines. That may be a temporary condition due to the war. We have to look at the matter not only during war conditions but in time of peace.

Mr. JONES. I understand, and, of course, my statement takes into consideration the fact that the conditions are not normal. All the large water carriers have abandoned the canal. There is no regular service through the canal. The American-Hawaiian Lines took their ships out of the service and paid the transcontinental carriers a premium for hauling sugar that they had contracted to haul through the canal, and still claimed they were making money in the transaction.

Mr. ESCH. Does the Tehautepec route still serve as a competitor with the transcontinental lines?

Mr. JONES. No; it is not an active competitor. The regular service is through the canal. As far as I know I do not believe the Tehautepec route has been in effect since the opening of the canal.

Mr. SIMS. I would like to ask you what is the basis of the charge—you can name any place. You are from Arizona?

Mr. JONES. Yes, sir.

Mr. SIMS. I came through Arizona partly in the day time and partly at night. I do not know what particular place to name. What particular place is on the Southern Pacific between here and Arizona?

Mr. JONES. The Southern Pacific traverses the State in the southern part.

Mr. SIMS. Just name some city on that line.

Mr. JONES. Tucson.

Mr. SIMS. You are from Arizona?

Mr. JONES. Phoenix, Ariz.

Mr. SIMS. Phoenix, Ariz.?

Mr. JONES. Yes, sir.

Mr. SIMS. Suppose there is a shipment coming from, say, Atlanta, Ga., or Savannah, Ga.—that is on the ocean—say Savannah coming to Tucson. Is it a fact that the rate charged is the ocean rate from Savannah to—what is the ocean port of the Southern Pacific here?

Mr. JONES. San Pedro, or Los Angeles Harbor.

Mr. SIMS. Do they charge a rate from Atlanta to Tucson equal to the water rate to Los Angeles plus the railroad rate from Los Angeles to Tucson? How do they adjust those charges?

Mr. JONES. The rate from Savannah to Los Angeles is a fixed rate, made by conference and practically agreement of the transcontinental

carriers, and presumably made when water competition was a factor, and as high as it could be made and yet what the carriers believed was a fair part of the traffic. There was no real basis, if that was your question—no combination of rates. The rail lines had heretofore really set the pace in rate making even for the water lines.

Mr. SIMS. Then the rate was not the water rate to the nearest point on the railroad plus the local from there to Tucson?

Mr. JONES. Yes; I understand your question now. That was the basis of rates into all Arizona points prior to about three years ago, when, under the suggestion of the commission, a modification of that was made and to points as far east from tidewater as, say, 500 miles, the rates might be and frequently were somewhat less than the combination. For illustration, take a 75-cent rate on steel or iron from Birmingham to Los Angeles—the rate to an intermediate point would be 75 cents plus the local rate, as you moved east, up to a point where it might meet a direct rate made with some respect to, we might say, its reasonableness.

Mr. SIMS. Take New York; that is on the Atlantic Ocean. Now, then, the water rate from New York to San Francisco—the all-water rate through the canal—would be anything you want to make it—say, \$10 a ton for some kinds of freight—and from San Francisco east on a direct line (on the railroad line that would probably take it, if it came all rail) to a point, say, 500 miles east of San Francisco; would the rate to this interior point be the water rate plus the local rate from San Francisco to this interior point, the freight going through by rail from New York to within 500 miles of the coast?

Mr. JONES. Up to two or three years ago, when the Interstate Commerce Commission, through a decision of Commissioner Lane, condemned that in measured terms—that was the basis.

Mr. SIMS. What is the basis now?

Mr. JONES. I will try to illustrate it and make it clear. The rate, say, to Phoenix, on a commodity will be \$1, which was made because, in the opinion of the railroads, it was a reasonable rate.

Mr. SIMS. From some fixed point?

Mr. JONES. From some particular point—let that be from the Mississippi River—from St. Louis. They would make a rate of 75 cents to Los Angeles, a farther distance, which would be 25 cents less on the ground that that rate was necessary in order for the rail carriers to compete with the water carriers. Now, the conditions to-day are that that rate to an intermediate point up to the point where you would reach the dollar rate would be the terminal rate plus 75 per cent of the local. That was done by the commission out of deference to an appeal from places like San Bernardino and points not far remote from tidewater, that with the full local back, they would be driven out of the distributing business, and that difference in the combination was given. That prevails to-day.

Mr. SIMS. But the facts are that the intermediate place is charged higher for freight, although much nearer the starting point of the shipment, than the point having water competition?

Mr. JONES. That is true.

Mr. SIMS. That is the general rule, is it not?

Mr. JONES. That is the general rule; yes, sir.

Mr. SIMS. Can you give me any idea as to how that charge is made up? What principle controls that—what measure of determining that or means of determining that are employed? How do they arrive at how much they shall charge?

Mr. JONES. There is no rule or principle that I could explain. It is just the result of probably what the railroads would say was the best judgment of their traffic officials.

Mr. SIMS. The railroad, then, does charge more to a nearer point than to a farther one if the farther one has water competition?

Mr. JONES. Yes, sir.

Mr. SIMS. But it does not always charge as much more as the full charge to the water point and then the local from there back to the destination of the freight as originally billed?

Mr. JONES. Not at this time.

Mr. SIMS. Not at this time?

Mr. JONES. Not at this time.

Mr. SIMS. It is simply an arbitrary method of ascertaining what the rates shall be?

Mr. JONES. To a very great extent. The making of freight rates in their entirety is an arbitrary matter, to a very great extent.

Mr. SIMS. Is it based on the idea that the rate they do make is a reasonable one from the point of shipment to the point of destination?

Mr. JONES. It would be defended if attacked by the railroads as being reasonable.

Mr. SIMS. Per se?

Mr. JONES. Yes, sir.

Mr. SIMS. Giving a cheaper rate to a farther point, although going over the same line, would be defended on the theory they could not compete with the water competitor if not allowed to do that?

Mr. JONES. Yes, sir.

Mr. SIMS. And your theory is that this prevents interior development?

Mr. JONES. Unquestionably. It is a discrimination. It is undue and unjust discrimination and has retarded the development of the interior.

Mr. SIMS. An industry that might locate out 500 miles from the shore will go to the shore in order to get the competitive water rates?

Mr. JONES. They are practically forced to the shores.

Mr. SIMS. And your contention is that that prevents the development of the interior, although the interior would enjoy reasonable rates if there was no water competition?

Mr. JONES. That is the theory of the railroads in defending their rates, that the interior is getting reasonable rates, just as originally they defended the interior rates as being reasonable when they were the terminal rates plus the full locals back.

Mr. THOM. May I ask, Judge Sims, that you bring out this point, whether or not their rates to the interior have not been passed on and in most cases fixed by the Interstate Commerce Commission and not by the carriers?

Mr. SIMS. The witness can answer that.

Mr. JONES. My answer would be, no; that has not been done.

Mr. SIMS. What is your remedy for what you claim to be an unjust discrimination? I understood you to say that we should abolish or

make the rates reasonable. You mean by that that if they do carry to the farther point and charge 75 cents they can not charge the interior more than 75 cents for just a portion of that distance?

Mr. JONES. My theory is that the rates should be graduated from the point of origin to the points of destination and at any point intermediate; where distance is a factor have the rates commensurate with that distance.

Mr. SIMS. You mean to adopt rigidly the mileage basis?

Mr. JONES. Yes, sir.

Mr. SIMS. And it is necessary to the development of the interior as against these points where there is water competition to maintain such a rule of rates?

Mr. JONES. Yes, sir. Now, I go this much further in that respect: When that adjustment is made (that adjustment should be made, in my opinion, and made at once) and when water transportation became a potent factor—and I have stated this to the Interstate Commerce Commission, that personally I would not oppose it—I would join with the railroads in a readjustment that would give the railroads a fair part of the terminal traffic, if it could be done; if they could hold that traffic and move it at a profit. But my experience in the rate situation is that where water competition is met with, that there is always a differential between the water and rail rates. The rail service is more valuable. It is more regular. The hazards are less, and if the steamship lines running through the canal find a basis of rates in effect to the terminal cities, that they will only cut under those rates a sufficient amount to get what they consider a fair share of the traffic—what might fill their boats—but in the past the rail carriers have rather taken the initiative and maintained rates, and the steamship lines have been obliged to cut under what the railroads say are unreasonable rates in the first instance.

Mr. SIMS. Then your theory is to adopt rates for the whole country upon a mileage basis or the value of the service rendered as determined by the length of haul?

Mr. JONES. I believe to-day that is the solution of a great many discriminatory situations, and would be beneficial to the carriers.

Mr. SIMS. And would result in the development of the interior points, which are now suffering, as you claim, from such discrimination?

Mr. JONES. Yes, sir; I think that would follow, as a matter of fact.

Mr. SIMS. Have you known of any instances of industries being dismantled, so to speak, and going to the water competitive points after having tried to survive on the interior rates?

Mr. JONES. It would be almost foolhardy for anyone to establish an industry there in the first instance, although we have had some instances of industries that were established and abandoned, and that was given as the cause, that they could not compete with the industries at the coast. I think Utah has cases of that kind, probably to a greater extent than Arizona.

Mr. SIMS. Then your contention would lead to a law providing that if the carriers carried traffic to Los Angeles for a certain rate, they could not charge any more than a just proportion of that rate to a point nearer the shipping point than Los Angeles, regardless of what effect it might have on business in Los Angeles?

Mr. JONES. I think so; yes, sir. That is my position exactly. If Los Angeles is getting something she is not entitled to, why, it would be her misfortune if she lost it.

Mr. SIMS. She is entitled to the water rates, is she not?

Mr. JONES. She is entitled to the water rates, and when water competition reappears she can avail herself of the water transportation.

Mr. SIMS. I am supposing it is present for the sake of argument. But, having that natural advantage, you do not think that her industries should have an advantage, then, in competing where the railroad is the only means of service with the interior points, by giving them that discrimination, on account of already having a natural advantage in the way of water rates for water shipment?

Mr. JONES. I do not think terminal cities are entitled to that advantage, and it is an advantage.

Mr. SIMS. Can you state in a general way, so the people who will read this record can understand it, the reasons for your contention? You say you do not think so. You may assume we know your reasons, but we do not. What are your arguments in favor of your position as to what effect it has on the interior country and what advantage it gives to the water competing points, etc.? Explain it just as though it was a new proposition and none of us knew anything about it.

Mr. JONES. I have tried to make it clear that in the past, even where there was no water competition, where the carriers by water were owned by the rail lines, this rate situation still prevailed. It is a matter of record and a matter of history in this State that the merchants at one time attempted to free themselves from that condition, from the condition of rail ownership of steamship lines, through the institution of a line of sailing ships, and the rates were made so low by the carriers that they drove those ships off the sea. It does not seem to me to be a healthy condition when carriers, either by law or by an order of the Interstate Commerce Commission, are permitted to continue that practice.

Now, from a practical standpoint—from a practical rate man's standpoint—I have had some experience in rate making, and I would say that the time is most opportune now for the railroads to establish what they would feel—and I would leave it to their judgment—is a fair line of transcontinental rates. There is nothing intervening to prevent it in the way of competitive conditions. Those rates should be graduated back. From a practical standpoint, when the water carriers reappear, they are going to make rates slightly under those rail rates, having in mind that their service is inferior, and they are going to take some of that business. If through their own competition or own greed—if you will permit that word—they should go very much lower, then I think it is a condition that we might all well get together on and discuss and I am sure that the Interstate Commerce Commission would be able to find some solution. The carriers in presenting this matter of late have adopted the proposition that they should be permitted to participate in this competitive business—water competitive business—and if they can show the commission that the rates they make through tidewater covers the out-of-pocket cost, or probably a trifle more—and they have attempted to measure them and have possibly measured them—but if they are allowed to carry on a transcontinental line 50 per

cent of their traffic at cost and can make money on other traffic, the interior is going to bear an undue burden in giving them a profit.

Mr. SIMS. I have heard arguments presented in connection with a railroad bill, that trains, having to run perhaps according to schedule time, if they carried freight in competition with water at the water competing points, that all it makes on that is an increase in its facilities to serve the interior points at a lower rate than it could if it did not make anything on that water competing point; in other words, if they did not carry any freight against water competition, even though the amount received might be small, that the interior point would have to pay more for its freight than it does now, because the carriers would be deprived of whatever they did make on the water competing business. Have you considered that point of it and investigated it to see what is in it?

Mr. JONES. I have heard that argument advanced by railroad traffic men. I am not willing to subscribe to that doctrine.

Mr. SIMS. You do not accept that?

Mr. JONES. No, sir.

The VICE CHAIRMAN. That is simply nothing more than the old doctrine that it is better to work for nothing than to do nothing.

Mr. JONES. Yes, sir; that is a fair illustration. I think, gentlemen, in that connection, that the Interstate Commerce Commission should have jurisdiction over transportation from one point in the United States to another point in the United States wholly by water. That would solve the situation, in my opinion.

Mr. SIMS. Would you want the commission to have the right to fix a minimum water competing rate?

The VICE CHAIRMAN. My committee has been afraid to go to that extent for fear they would raise all the water rates to the level of the rail rates. We thought that would be the tendency.

Mr. JONES. Of course if that would be attempted the rail lines would carry all the business. Rail transportation is more valuable than water transportation.

The CHAIRMAN. Why do you think rail transportation is more valuable than water transportation—say, transportation from New York to San Francisco by water as compared with transportation by rail? Can not the water transportation be conducted in a shorter time?

Mr. JONES. As a rule, the transportation is conducted in a shorter time—

The CHAIRMAN. By water?

Mr. JONES. By rail. I think when the American-Hawaiian Line and the Luckenbach Line had regular sailings, it was shown that the rail carriers, under their schedules, would transport the traffic in five days shorter time from San Francisco to New York. But the hazards and insurance features and loss and damage, and a great many other things, enter into it and make the rail carriage more attractive. The shipper stows his stuff in the car and unloads it and is not subject to storage like the water business is. I have never heard that fact disputed by either the rail or water carriers, that the rail transportation was the more desirable.

Senator CUMMINS. You mentioned, I think, that it was your opinion that the fourth section of the interstate-commerce law should

be made rigid by amendment. How would you express it? In what form should it be made rigid?

Mr. JONES. Just a bare statement that a railroad should not charge more for a shorter than a longer haul on the same line in the same direction.

Senator CUMMINS. It would then be rigid; but is there any more justification for charging as much for a shorter haul as for a longer haul over the same line in the same direction?

Mr. JONES. There is no justification in practice in charging the short-line point as high a rate as the longer-distant point if the distance is a measurable factor in rate making.

Senator CUMMINS. The act before 1910, as you say—and I think that is historically true—was made practically inoperative by the construction which was put upon the phrase “under substantially similar circumstances and conditions.” Now, the act, as we amended it in 1910, gave to the Interstate Commerce Commission no criterion or no standard whatever, but left it entirely and absolutely in the discretion of the commission. Now, I have always believed—and I contended then—that the proviso of the fourth section as amended in 1910 was unconstitutional. When you put that question up to the Interstate Commerce Commission, whether they shall exempt a particular commodity or a particular railroad from the operation of the general language of the section, what is the standard which the commission must employ—by what rule do they measure that?

Mr. JONES. Well, inasmuch as they have not yet rendered a final decision in these intermountain cases, of course I could not state what their measure would be in that instance. They have laid down an administrative ruling that where one line of greater mileage—a circuitous line—operates between two points in competition with a short line that certain things must be shown, and I would not undertake to state now just what those things are; but it is perfectly logical that their ruling in that respect was sound, that the longer line must show to their satisfaction certain things; that the imposition of the higher rate to the intermediate point will not result in undue discrimination, and that they must be a certain percentage higher; that is to say—and I would not want to state those figures—but the line must be longer, by a certain percentage, than the shorter line, and has made what I believe to be a rather logical measure of relief in those instances as between two rail carriers. Of course the supposition is that, dealing with the water situation, it must be shown affirmatively that the lower rate must be made to preserve to the carriers a share in the traffic, and that the rate must be at least compensatory.

Senator CUMMINS. That is entirely in the discretion of the commission?

Mr. JONES. Absolutely.

Senator CUMMINS. What we said to the commission in 1910, or what we said to the country, was that there should be no greater charge for the shorter haul than the longer haul, but that the commission could repeal the law if it wanted to, without giving any reason or being subject to any rule or standard legislatively laid down.

Mr. JONES. That is correct. That is my understanding of it.

Senator CUMMINS. It has always seemed to me to be the most extraordinary legislation adopted for the guidance of a legislative body.

Mr. JONES. In practice it has certainly worked out disastrously to the great intermountain section. We have felt that we are not being treated fairly.

Senator CUMMINS. Is it your opinion that Congress ought now to declare positively and absolutely that there should be no greater charge for the shorter than the longer haul in the same direction over the same line?

Mr. JONES. I would answer that in the affirmative, unless Congress could lay down some governing rule.

Senator CUMMINS. Do you know of any governing rule we could lay down? Have you ever put it in form? That is the problem we have to solve.

Mr. JONES. As between competing rail lines, I think the rule—the administrative ruling of the commission—that they now operate under would be perfectly fair, but as between rail and water carriers, if you want to preserve for the country the value of water transportation, it must not be destroyed by a line of rail carriers making rates much less than reasonable rates for the transportation they perform.

Senator CUMMINS. Now, I recognize that there is an essential difference between competition between two land carriers and competition between a land carrier and a water carrier; and, as to the former, **your idea would be that if one line is more circuitous or longer than the other, that we permit a lower rate to run back to the competing point—**

Mr. JONES. I think that would be a very fair rule.

Senator CUMMINS. Would you permit that if the long route was so much longer as to involve a carriage at less than cost?

Mr. JONES. I should not permit that if it resulted in transportation at less than cost.

Senator CUMMINS. Now, with regard to water carriers, does the same rule which the railroads have adopted for the western coast apply also to the eastern coast?

Mr. JONES. I am not so familiar with the eastern coast. It has been significant to us that the eastern trunk lines have never supported the position of the transcontinental carriers in their applications for relief.

Senator CUMMINS. Suppose they were shipping from San Francisco to Pittsburgh, have the carriers ever insisted upon the rate to New York City and back to Pittsburgh?

Mr. JONES. Rates have never been constructed on that basis on the Atlantic seaboard.

Senator CUMMINS. Do you know why that practice has been adopted for the western coast and not for the eastern coast?

Mr. JONES. I believe it is—putting it rather bluntly and frankly—because the carriers have gotten away with it, and it has been a source of a great deal of revenue that they have not earned; and, further, in connection with that, it can be stated that the lines east of El Paso and Ogden do not participate in the divisions of intermediate higher rates, or did not the last time we went into the question—that is, a shipment from Chicago, say, to San Francisco or Los An-

geles over the Rock Island to El Paso, on the Southern Pacific, where the freight was \$200, and on the same train another shipment dropped off at Phoenix, 500 miles shorter haul, where the freight would be \$300, the Rock Island in both instances got the same revenue and lines west of El Paso took up that flap.

Senator CUMMINS. Have you any information with regard to the volume of business that any given railroad does—for instance, the Union Pacific or Southern Pacific—at its terminal on the coast, as compared with the volume of business in the intermountain country?

Mr. JONES. I have not in my mind those figures, Senator; but, to the surprise, I think, of the Interstate Commerce Commission and, I know, to my surprise and others, there were put into the record at Salt Lake City, in the last hearing of that case, figures showing that the traffic to the intermountain district was vastly greater than to the terminals.

Senator CUMMINS. Do you recognize the cost of the service as a fair basis for making rates?

Mr. JONES. In making freight rates, it is very doubtful whether the cost of the service should govern. It is obvious that it does not cost any more actually, aside from the hazard, to move a carload of 20 tons of pig iron than it does to move 20 tons of tea. Of course, there is a greater hazard and insurance rates on the higher class of commodity. The ability of the traffic to pay the rate, whether it would move or not, often governs the movement of the low-class commodity. I think even to those that have studied the matter a great many years that the state of the freight rates and the relation one freight rate should bear to another, as to commodities, is somewhat complicated and should be so arranged that it would be flexible, and I believe the railroad companies have been heretofore, and are at this time, using very good judgment and making few mistakes in making their rates so that one would bear the proper relationship to another.

Senator CUMMINS. The ability of any particular traffic to pay the rate is only a paraphrase for making rates so that the public welfare will be best promoted, is it not—or ought to be?

Mr. JONES. That is one way to express it. It used to be expressed in perhaps a more forceful way in the past—what the traffic would bear.

Senator CUMMINS. It is obvious, is it not, that there are some kinds of traffic which must be moved at a lower rate in order that the public may be properly served in its distribution?

Mr. JONES. Yes, sir.

Senator CUMMINS. Because if the rates were made purely on the cost of service it would prohibit the distribution of the commodity, whatever it may be, and various parts of the country would be deprived of the use of the commodity?

Mr. JONES. I think that is unquestionably true.

Senator CUMMINS. If that is so, there must be a discretion reposed somewhere in adjusting these rates from the standpoint of the public welfare, and that would apply to the length of haul as well as to the kind of commodity, and what has always bothered me—and I would be very glad for some light on the subject—is to prescribe some rule by which an administrative body could be governed in exercising that discretion.

Mr. JONES. I should hate to attempt to make an answer to that offhand.

Senator CUMMINS. At the present time the carriers themselves exercise it very largely, and they may do it sometimes wisely and sometimes unwisely, sometimes justly and sometimes unjustly. If we take that discretion from the railways and repose it in a public body, we have got to give that public body some guide so that it can proceed, for I do not think it either practicable or legal, simply to say to a public body, "You take this and do what you please about it."

Mr. JONES. The Interstate Commerce Commission have construed that proviso substantially to that effect.

Senator CUMMINS. I know they have.

Mr. JONES. That they can do just what they please about it.

Senator CUMMINS. I am perfectly free to say that I am not as much opposed to the fourth section as amended now as I was when it was originally put up. Of course, you know it was a compromise at that time, at least in the Senate, between the demand for a rigid long-and-short-haul clause, such as you have suggested, and the law as it existed at that time.

Mr. JONES. Yes, sir.

Senator CUMMINS. And I have really doubted whether we have bettered the situation or not.

The VICE CHAIRMAN. In the House we thought it sufficient to transfer the discretion from the railroads themselves to the commission, thinking the commission would exercise it wisely, and if not, that the personnel of the commission could be changed so that it would do it wisely.

The CHAIRMAN. Have you any jobbing centers in Arizona?

Mr. JONES. Yes, sir; we have several, and possibly in the order of their importance they would be Phoenix, Tucson, but practically all the towns of any importance have large mercantile institutions that job within a radius half way to their next town. That would take in Flagstaff, Winslow, on the Santa Fe, and Kingland to certain points in the southern part of the State.

The CHAIRMAN. As to those jobbing centers, has their condition been improved at all by the amendment which was adopted to the fourth section of the interstate-commerce act in 1910?

Mr. JONES. The conditions have improved wonderfully since that time, not wholly by reason of any final order of the commission, but by reason of the suggestions of the commission and by reason, we think, of the constant agitation by the Intermountain States threatening against that situation. A question came up a moment ago as to whether the Interstate Commerce Commission had not prescribed the present scale of rates. I state my answer rather broadly, having in mind, however, Arizona particularly. They may have prescribed—and I think they did prescribe—a scale of rates to Salt Lake City, but there has been no line of rates prescribed by the commission.

The VICE CHAIRMAN. If the chairman will permit, did not the carriers themselves, following that amendment, make a general revision of their rates to meet that amendment?

Mr. JONES. There has been an effort in that direction and we are very much better off, and I think our country has responded in increased business, development, population, etc.

The CHAIRMAN. But the change has not been as beneficial as you expected, or as you had a right to believe?

Mr. JONES. We have not had out of the situation what we believe we are entitled to.

The CHAIRMAN. You say this beneficial change has not come from the action of the commission, but from the action of the carriers themselves in an effort to meet the purpose that the amendment was intended to secure?

Mr. JONES. I do not want to be understood as saying that no benefits have been derived through the action of the commission. The first order in the intermountain cases—comprehensive order—was written by Commissioner Lane—

The CHAIRMAN. When was that given?

Mr. JONES. That was given—I do not want to be too sure about that, but it seems to me in 1912.

Mr. ESCH. Was that the Spokane case?

Mr. JONES. Yes, sir.

Mr. ESCH. Well, that was in 1912.

The VICE CHAIRMAN. Did not the carriers themselves make their own revision, following this amendment of the fourth section? Did they not then submit a revision to the commission with applications for permission to exercise their discretion as to permitting these exceptions?

Mr. JONES. The commission, by appropriate order or notice, gave the carriers a certain period within which they might apply for exemptions where they were then violating the fourth section; and the carriers generally made such applications, and that order had the effect of sustaining, or at least approving temporarily, a continuation of the rate condition existing until the commission could take up and dispose of those matters. There were a great many cases involved, both freight and passenger, and spread all over the United States, and it was a large task to meet those.

The CHAIRMAN. Has the commission, in any case, disposed of those cases?

Mr. JONES. Yes, sir; it has disposed of a great many of those cases. I have not followed them all closely.

The CHAIRMAN. Favorably to the intermountain region or unfavorably?

Mr. JONES. Not with respect to the intermountain situation, because that, as I say, is still pending. The last order issued by the commission was to have been effective. I think, the 1st of October, where the long-and-short-haul provision of the law would have been regarded—it was suspended, I understand, by reason of an amendment or some act passed by Congress that rates could not be advanced without an application from the carriers and their application being justified.

Mr. ESCH. That is, to increase rates?

Mr. JONES. Yes; increase rates. We understood that was without any official action.

The CHAIRMAN. That was last October?

Mr. JONES. My impression was that the order of the commission issued some time ago was made effective the 1st or the 15th of October.

Senator CUMMINS. You remember that it was following the decision or following the application of the fourth section to many of the southern railways which gave rise to an increase in certain rates as to which Senator Smith of Georgia complained so bitterly while we were passing the last act, and out of that grew his proposed amendment, which was put in in some form when we increased the Interstate Commerce Commission. That all followed the application of this section to the situation.

The CHAIRMAN. How do you account for the delay of some seven years in reaching any conclusion on this subject?

Mr. JONES. Well, by the first order, as I started to state, of Commissioner Lane's, we were deprived of the benefits we might have under that order by an appeal by the railroads to the courts. The Supreme Court affirmed the decision and then the canal came along and was completed and various things have interposed.

The CHAIRMAN. How has the canal been a disturbing factor?

Mr. JONES. Well, the railroads, when the canal was completed claimed that the cases should be reopened because conditions had very materially changed—conditions of water transportation as between the canal and between the Tehuantepec route.

The CHAIRMAN. Was that contention disposed of?

Mr. JONES. Yes, sir; that contention was disposed of after a great many hearings and arguments and finally resulted in this order that I have spoken of which became effective a short time ago, and which has been, by reason of—

The CHAIRMAN. That order was suspended by reason of the legislative order of Congress in the bill increasing the Interstate Commerce Commission which forbade railroads making any increases in rates without the approval of the commission.

Mr. JONES. That is my understanding; yes, sir.

Senator CUMMINS. Is it not true that there was one phase of the Spokane case that had received rather careful consideration and rather a full opinion, which related mainly to eastbound traffic in which the country was divided into zones, and the rates were fixed from the west into each of those zones?

Mr. JONES. That was Commissioner Lane's opinion.

Senator CUMMINS. That had little, if anything, to do with the westbound traffic?

Mr. JONES. Well, that went to the westbound rate situation. Certain zones were created starting at the Missouri River and ending at the Atlantic seaboard, where the rates from those zones were built up on certain percentages to certain points up to the terminals.

Mr. ESCH. That is where they established the zone system of rates; that is, from the Missouri River points to the Pacific terminals, there is a blanket rate, from the territory between the Missouri and Mississippi there is a differential of 7½ per cent, between the Mississippi River and the Pittsburgh line, a differential of 15 per cent, and for the whole Atlantic coast line a differential of 25 per cent?

Mr. JONES. Yes, sir.

Mr. ESCH. That did not become fully operative?

Mr. JONES. No, sir.

Mr. ESCH. If it had become operative, would you have been advantaged?

Mr. JONES. Well, it would have been an advantage. At that time when that order was entered, our rates were on the old basis of the full back haul—the full locals back. It would have given us the Missouri rate—the same rates that apply to the terminals—and the rates would have been very much lower than the locals back, and would have been a relief to us in a great many ways.

Mr. ESCH. If your contention that there should be distance tariffs established were put into effect, it would deprive our Pittsburgh and Atlantic coast people of the opportunity of supply your markets unless through the Panama Canal, and an absorption of rates from the interior points of production to the coast points would meet that competition.

Mr. JONES. I do not believe it would keep any district like Pittsburghs out of the market. That is my judgment.

Mr. ESCH. The ship lines have absorbed the rail rate from Pittsburgh to the Atlantic, have they not?

Mr. JONES. There was a time when they did that.

Mr. ESCH. And then they absorbed some of the rates from the Pacific coast ports to your interior here.

Mr. JONES. They did do certain points, for the reason that the railroads had given those points—namely, points like San Jose and Sacramento—had given them those rates, and water lines absorbed those rates to compete with the railroads.

The VICE CHAIRMAN. You referred a time or two to the rail carriers driving temporarily the water carriers out of business by reducing rates. There is an amendment to the fourth section, made in 1910, which you have not mentioned, by which we provided if a rail carrier did it, that it should not afterwards increase its rates without showing changed conditions not attributable to competition. What effect has that had on the situation? Has it benefited you any?

Mr. JONES. As far as I know that has not been regarded by the Interstate Commerce Commission. It has not regarded it in dealing with this situation here, at least.

The VICE CHAIRMAN. Has it been presented before them?

Mr. JONES. Yes, sir; it has been presented to them, and rates have been increased, I think, over the protest of certain interests.

The VICE CHAIRMAN. Probably they decided an issue of facts based on the language about changed conditions.

Mr. JONES. That might have been it. I do not attempt to speak authoritatively on that because I have not given that situation very close study.

The CHAIRMAN. From whom does the opposition to the relief which the intermountain region is seeking under the amendment of 1910 come—from the railroads or from the jobbing centers that are the beneficiaries of water competition?

Mr. JONES. From both, Senator. The Pacific coast terminal cities, through their commercial organizations, have naturally been very active in the matter, and they have substantially throughout the controversy supported the position of the railroads.

The CHAIRMAN. Is that true of all the coast cities—San Francisco and Los Angeles?

Mr. JONES. And Portland and Seattle.

The CHAIRMAN. Portland and Seattle?

Mr. JONES. Yes, sir.

Mr. SIMS. Is that for the reason that these local cities do the jobbing to the near-by points which they might lose in case there was a rate fixed based on mileage from the East?

Mr. JONES. Of course, they have not stated their reasons, but it is obvious those are the reasons; that if Salt Lake City or Phoenix or Reno gets the same rate as San Francisco, San Francisco could not supply those towns with any particular commodity.

Mr. SIMS. Do they contend, on account of the water rate they have from the East, that they can supply these points cheaper than these points could be supplied if they received their rates from the East—their all-rail rates from the East, such rates as would be declared to be reasonable?

Mr. JONES. I think there was a period after the opening of the canal, when the traffic through the canal was dense, that that was true. The coast cities could ship their stuff by water and rail back into the interior to a certain distance, and I think it was shown that the interior cities themselves availed themselves of that water rate in combination with the rail rates.

Mr. SIMS. So the coast cities contend that the interior cities are not injured by reason of their having this cheaper rate?

Mr. JONES. I do not know that they have contended they are not injured, because they have been injured; but they have contended that the injury was the result of conditions that have grown up through a number of years, and they should not be deprived of the advantages they have previously had. To a very great extent it is a fictitious commercial condition that can not be perpetuated under any system of equity.

The VICE CHAIRMAN. Under an amendment contained in section 11 of the Panama Canal act the commission may compel a railroad to make a connection with any ship, and the commission may also proportion the land part of the charge; so, if, after the war is over, there is sufficient shipping available for commercial transportation, it seems to me your interior points could very easily arrange transportation around from the Atlantic coast, or from the interior towns in the East around via the Pacific Ocean, under that amendment. It seems to me if the terms of that amendment are availed of in time of peace it will prove invaluable to points in the interior.

Mr. JONES. I felt that the construction of the Panama Canal was an asset to the entire country, including the intermountain districts, and that under certain adjustments we might use that method of transportation.

The VICE CHAIRMAN. You can compel an adjustment if there are ships available.

Mr. JONES. Yes, sir.

The CHAIRMAN. Has the contention of Arizona been that the intermountain charge should be reduced to a proportional part of the total charge to the terminal points, or has it been that the charge to the terminal points should be increased?

Mr. JONES. Well, we have not, of course, advocated an increase of the terminal rates. The result would be if the old rates were sustained an increase in the terminal rates. We have taken the position that, since the canal has been closed, or virtually has not been a factor in rate making, the carriers should observe the fourth

by the shippers and the State, or by the State and the Interstate Commerce Commission, there is scarcely any of those problems which can not be fairly and justly disposed of.

Mr. ESCH. Mr. Edgerton claimed that that would mean a compromise.

Mr. JONES. Of course where two people differ and a solution is found it is generally in the nature of a compromise. I do not believe the Shreveport matter would have ever come to the attention of the country, possibly, if the Texas and Louisiana commissions could have gotten together, or even if the Texas commission had entered its appearance and supported its contention before the Interstate Commerce Commission. That is just my personal view. But we have a Shreveport case, and we have had three hearings on that case. We feel, with all respect to the Interstate Commerce Commission, that we have been treated rather unfairly, in that we have been called to Washington three times and to Los Angeles two or three times to defend a scale of State rates when the ostensible party who was complaining dropped out and the railroads assumed the position of complainant. If the carriers are going to use that situation in that way, it is going to cause trouble; but if, in a spirit of fairness, those interested in the matter will go over the matter, in ninety-nine out of a hundred cases the matter will be solved satisfactorily. We have adopted a great many schedules of the Interstate Commerce Commission—their express schedule, their classifications, and so forth, and as far as we can we have adopted their plan. The great trouble, in my opinion, with the Interstate Commerce Commission attempting to handle State matters at this time would be the physical impossibility of ever reaching them and possibly the expense entailed on the country, because the States would have to maintain State bureaus for the regulation of other utilities.

Mr. ESCH. One of the chief complaints under the existing practice is delay in getting decisions for the commission, is it not?

Mr. JONES. That is a source of considerable complaint.

Mr. ESCH. The carriers suggest that there be established throughout the country regional commissions covering certain traffic areas with possibly the right of appeal to the Interstate Commerce Commission. Would that organization, in your opinion, expedite or delay final decisions?

Mr. JONES. It seems to me that would delay a final decision, because if either party was finally displeased there would be an appeal.

Mr. ESCH. Supposing we gave the regional commissions final authority in a certain class of cases, would you think that would be advisable in the interest of expedition? Do you think it could be done—to deprive them of the right of appeal, or ought we to deprive them of the right of appeal?

Mr. JONES. I do not believe that they ought to be deprived of the right of appeal. I do not think it would work out in practice satisfactorily.

The VICE CHAIRMAN. We have now provided for an increase in the commission and also permitted it to subdivide itself into four or more subdivisions, each subdivision with authority to act and decide cases subject to revision by the entire commission under certain conditions. If we had enough commissioners as able as they ought to be in those positions, and say that the commissioners shall take

testimony and hear cases and consider them and pass on them, instead of sending lawyers and examiners and clerks around to dispose of them, do you not think that would expedite matters and be more satisfactory?

Mr. JONES. I do. I think there has been a great deal of dissatisfaction and a disposition to criticism directed against the Interstate Commerce Commission by reason of that very fact you speak of. I do not think there is anyone who started to work with the commission that has not at some time found some cases rendered by the commission where the opinion, up to the point of order, would lead you to believe the order would go one way and would go the other, indicating that the examiner, or whoever handled the case, had his mind pretty well made up and wrote out his opinion with the idea of reaching a certain conclusion and the commission, or some one, got hold of it and changed it.

The CHAIRMAN. Apart from any question of invading the jurisdiction exercised by the State commissions, do you think that the establishment of regional commissions would advance the interests of shippers throughout the country?

Mr. JONES. I think possibly it could be done. I think the organization could be perfected where that could be done. If the work could be effectually kept up, it seems to me there should be as many, if not more, commissioners as there are States.

The CHAIRMAN. That is what I wanted to get. Do you not think in the intermountain regions, for instance, that more than one commissioner would be required there?

Mr. JONES. If they had supervision over all intrastate matters, I do not see how it would be possible for them to reach all the cases promptly.

The CHAIRMAN. Do you think they would have to have one in every State?

Mr. JONES. I think possibly under some circumstances two States or more might be doubled up, and possibly in some instances one State would be a pretty big job. This State has five commissioners and they are pretty busy.

The CHAIRMAN. They handle all public utilities?

Mr. JONES. Yes, sir.

The CHAIRMAN. And that alone is a pretty large field of jurisdiction.

Mr. JONES. Yes, sir; my observation has been, as I stated a while ago, that any apparent conflict between Federal and State rate making might be obviated by the parties at interest. We have observed that the railroads are unnecessarily hampered by State legislative enactment going to so-called safety measures and operation limiting the number of cars and providing for a certain number of men, and that those things are really confusing to the railroads, and of course, if one State, for instance, Arizona, has a car-limit bill, a train on the Santa Fe leaving Gallop, in New Mexico, and coasting down the grade to Winslow, can pull as many cars as it can start, and in that case when you reach the State line, which is simply nothing but a signpost, to say that the conditions on the other side of the signpost are different, compelling a change in the train, is absurd.

I think, with Mr. Thelen, that in the matter of supervision of bond and stock issues, and those matters, going to a certain extent to the

regulation of safety appliances and matters of that kind, that those matters can be better handled by the Federal Government.

Mr. ESCH. Would you apply that to full crews and headlight laws?

Mr. JONES. Yes, sir.

The CHAIRMAN. So as to all matters relating to the size of trains, hours of labor, and the public safety you think it would be wiser to have that jurisdiction exercised under the national power than under the State?

Mr. JONES. I feel that way about it. You take the——

The CHAIRMAN. What powers do you think it is essential that the States themselves should hold? How is it with reference to the power of taxation? Do you deem it wiser to have the same rule of taxation applied all over laid down by the National Government, or have each State prescribe its own system of taxation?

Mr. JONES. Well, I do not know to what extent, if any, the present method of taxation might result in discrimination. I can see where it might.

The CHAIRMAN. You would regard that as unfortunate, would you not, in railroad administration?

Mr. JONES. Yes, sir.

The CHAIRMAN. Giving an unfair advantage to one State as against another?

Mr. JONES. Yes, sir; it might lay a burden upon one State where there were more moderate tax demands than in the other, although when you came to the question of values if the railroad properties were valued in the same way, a State commission might be better off in knowing what those values are. I heard the matter of taxation discussed here, and I must confess I do not know which plan would be better.

The CHAIRMAN. How do you view the question as to grade crossings?

Mr. JONES. It seems to me that grade crossings could be much better handled by the State.

The CHAIRMAN. How about terminal expenditures, in the way of stations, freight accommodations, etc., side tracks, and other facilities of transportation—which jurisdiction could best exercise its powers in the interest of the public?

Mr. JONES. Well, there is a question in those matters. I do not know why the State could not just as well, and possibly better, look after the terminals, etc. As I view it now, I should be inclined to that opinion. The State, of course, is in touch with the necessities of the business.

The CHAIRMAN. Then your idea would be to leave both jurisdictions operative in that field. You would not make it exclusive in the State, would you?

Mr. JONES. As far as I have gone into the subject I believe that the matter of capitalization and bond issues and matters of safety appliances, car limits, etc., and those matters, where the State boundaries can not affect the situation, that the Federal Government can better handle them. As I say, when the matter of regional commissioners came up I was somewhat inclined to take that view. We find the Interstate Commerce Commission, I think, is possibly tightening up in the matter of procedure and making it more difficult for a layman to get in, while the State commissions generally are

holding the doors open and letting a shipper come in and get an adjustment without very much formality.

The CHAIRMAN. Of course, you understand the whole scheme of the revision of national control involves bringing the regulating power nearer the people and communities?

Mr. JONES. Yes, sir; of course, mere State boundaries in the final analysis should not govern.

The CHAIRMAN. I can understand how taking the matter away from the States and moving it to Washington and centralizing it, would have its advantages, but my criticism is that centralizing will not permit it being brought closer to the people.

Mr. SIMS. Suppose there should be 20 regional commissions, would it not usually follow in effect, and would it not usually be a fact, that unless the decision of the regional commission was a matter of compromise and agreement between the complainant and the railroads, there would be an appeal to the commission by one party or the other?

Mr. JONES. I think so.

Mr. SIMS. Suppose they do appeal to the central commission and the central commission decides against the railroad company, and the railroad company immediately brings suit saying the commission has exceeded its authority and that the decision is confiscatory. You will have litigation in the courts. How can you prevent this litigation? Those matters can be alleged and an injunction obtained, and until the case is tried the order is suspended, and if it is suspended two years before the action of the court is had, it might as well not have been made in the first place.

Mr. JONES. That has been the history in some of these matters.

Mr. SIMS. Will it not be likely to happen again in the case of regional commissions?

Mr. JONES. Of course it opens the door to that. I have no doubt there would be a great many appeals from the regional commissions, in the hopes of getting a reversal.

Mr. SIMS. If the matter happened to be one of substantial importance, either party may take an appeal and if the railroad loses it will take an appeal always. Now, suppose the railroad company does not appeal from the action of the regional commission but brings its suit immediately and enjoins putting the order into effect on the ground that the commission exceeded its authority, or that the order is confiscatory? The courts could review the action of the regional as well as the central commission.

Mr. JONES. It would just add that one more chance of appeal and litigation.

Mr. THOM. I think you will find that that matter was decided by the Supreme Court in a case that went up from Virginia, the case of *Prentiss v. Atlantic Coast Line*.

Mr. SIMS. Does it hold that unless the railroad appeals to the commission, it could not attack the validity of the order?

Mr. THOM. Until the railroad or litigant exhausts its remedy afforded by the statute there is no justification for litigation. That case arose in this way: It arose under the Virginia system, and there had been a decision by the State Corporation Commission of Virginia

as to a rate, and immediately upon that decision there was an appeal to the courts; but the law provided that there might be an appeal from that decision, and the Supreme Court held that that attack in the courts was premature and that they ought to follow out the remedy afforded by statutory process before attacking the order of the subordinate body.

Mr. SIMS. Of course, we could provide in the statute that an appeal could be had by either party, and in case there was no appeal taken it should be final on the idea that it had been consented to. But suppose the order of the regional commission was attacked as null and void, as being beyond the authority of law and not having authorization to act in the matter, having exceeded its authority. Would you say the courts would not have jurisdiction to try that?

Mr. THOM. They did say that. It was attacked on the ground in that case that the corporation commission had exceeded its constitutional power.

Mr. TROY. Did not the Federal Constitution give that commission judicial powers? Is not that the reason of that decision?

Mr. THOM. No. The reason was that the Virginia constitution had afforded a supplemental remedy, which was an appeal from the State corporation commission on the question itself. Now, instead of taking that appeal there was an attack upon the validity of the order in the Federal court. The lower Federal court decided the case in favor of the attacking party, and an appeal was taken to the Supreme Court, and the Supreme Court said, in an opinion delivered by Mr. Justice Holmes, that that attack in the Federal court was premature; that they ought, by comity, to have pursued the remedy that was permitted by the system of law.

The VICE CHAIRMAN. You say there was a prayer for injunction?

Mr. THOM. Yes, sir.

The VICE CHAIRMAN. The law will not grant relief to a man who can get relief elsewhere.

Mr. TROY. Was not that because the Virginia constitution prescribed that they must appeal to the court from the decision of the Virginia commission?

Mr. THOM. No; it said they might appeal to the courts, but that in that case the remedy was not pursued.

Mr. SIMS. But from the action of each regional commission there will be an appeal to the central commission. It will be appealed by either side, and upon the final action of the central committee its action may be attacked in a suit in court for lack of authority, because it was confiscatory; in other words, you can finally attack the orders of the central commission in every case in which you can attack the order of the Interstate Commerce Commission now, on the same grounds?

Mr. JONES. That is true.

The CHAIRMAN. Are there any railroad corporations organized under the laws of Arizona?

Mr. JONES. Yes, sir.

The CHAIRMAN. Are there any operating in your State that are not organized under the laws of Arizona?

Mr. JONES. Yes, sir; a number.

The CHAIRMAN. Which preponderate?

Mr. JONES. Well, in mileage, of course, the foreign corporations preponderate.

The CHAIRMAN. How about in number?

Mr. JONES. In number I should think it would be about an even split. That is just a very hurried guess.

The CHAIRMAN. Now, take the great railway systems that pass through your State: There are the Southern Pacific, the Atchison, Topeka & Santa Fe—

Mr. JONES. The El Paso & Southwestern.

The CHAIRMAN. The El Paso & Southwestern?

Mr. JONES. Yes, sir.

The CHAIRMAN. How about the El Paso & Southwestern; is that incorporated under the laws of your State?

Mr. JONES. I think that is. The Arizona main line and branches are incorporated under our laws.

The CHAIRMAN. A separate corporation which is a part of this system?

Mr. JONES. Yes, sir.

The CHAIRMAN. How is it with the Southern Pacific?

Mr. JONES. The Southern Pacific, of course, is the parent corporation.

The CHAIRMAN. Organized under the laws of what State?

Mr. JONES. I think the Southern Pacific Railway Co. is composed of two corporations, one a Kentucky corporation, and, I think, the other is a California corporation; one an operating company and one an owning company.

The CHAIRMAN. The holding company is the Kentucky corporation and the operating company is the California corporation?

Mr. JONES. Yes, sir.

The CHAIRMAN. How about the Atchison, Topeka & Santa Fe?

Mr. JONES. Their main line is incorporated under the laws of Kansas, I understand. They have some branches that they own which were incorporated under our laws which have been recently absorbed by the parent corporation.

The CHAIRMAN. So that the parent corporation in Kansas owns the line operating in your State?

Mr. JONES. Yes, sir.

The CHAIRMAN. Of course, Arizona had no share in the legislation of Kansas or Kentucky that led to the organization of these great corporations. I want to ask you what you regard as the best system, a system that permits of the incorporation of a great system that is to operate in many States, of which the State of Arizona would be one, to be organized under the laws of a single State, and which perhaps does not have a mile of that railroad within its boundary, or a system that would submit the framing of charters of these corporations to the jurisdiction of the National Government?

Mr. JONES. I have only studied that situation since the question has been discussed here at this hearing. I have never given it any previous consideration. There may be good reasons why it would be better to have a national corporation, but if the sole reason would be to deprive the States of their regulatory power, I think that would be unwise. In my opinion, I think very soon after we attempted to

centralize control of the railroads of the United States we are going to have a clamor for public ownership, and that it will come.

The CHAIRMAN. You think it would be a step in that direction?

Mr. JONES. I do.

The CHAIRMAN. Would it necessarily lead to it?

Mr. JONES. It need not necessarily lead to it.

The CHAIRMAN. If it resulted in perfected regulation, such regulation as would satisfy the public, probably there would be no danger of public ownership.

Mr. JONES. It might have that effect.

The CHAIRMAN. Do you not think it wise, before coming to public ownership, to perfect in every way public regulation and only going to public ownership when the failure of public regulation is demonstrated?

Mr. JONES. I think that should be the last resort. I think it should be fully demonstrated that public regulation is defective before going to public ownership.

The CHAIRMAN. Now, I am as anxious as you are, or as any representatives of the States are, to see to it that the rights and privileges of the various communities and States are protected and guarded. Do you not think that in the scheme of incorporation—that in adopting a scheme of incorporation of these great railway systems—that we are very much more likely to have wise legislation providing for incorporation of such great systems when that legislation is adopted by a body in which every State of the Union has representatives, representatives in the Senate and popular representatives in the House, every district in the United States represented, than if you were to resort to the legislature of an individual State for such legislation, and possibly a State within whose boundary there would not be a mile of rail belonging to the organization sought to be effected? What do you think about that?

Mr. JONES. Well, it would seem on the face of it that the combined part of wisdom of the representatives of several States acting together might give us better results than one acting singly. If it would be the plan to confine that incorporation to railroads serving more than one State, I would see no objection to it, and there might be great advantages, but frequently railroads of but a few miles purely local in their character are incorporated. We have a great many in our State. Whether it would be wise to incorporate those under Federal laws or not is questionable.

The VICE CHAIRMAN. There are two kinds of persons in the law. There are artificial persons, such as corporations, and there are natural persons, such as those born of man and woman. The Constitution provides plenty of authority to regulate commerce between the States, regardless of whether the persons conducting the commerce are natural or artificial or where they may be born. Do you think it any more logical to say we could regulate these railroad corporations better if they were incorporated under the Federal law than to say that a man must be born in the District of Columbia in order to be amenable to the laws of the United States?

Mr. JONES. I have not studied that, but I agree with you, Judge, that centralization is unwise as an abstract proposition.

The CHAIRMAN. Now, Judge Bartine, you may proceed.

**STATEMENT OF H. F. BARTINE, CHAIRMAN OF THE NEVADA
RAILROAD COMMISSION, CARSON CITY, NEV.**

Mr. BARTINE. Mr. Chairman and gentlemen, I am chairman of the Nevada Railroad Commission, Carson City, Nev., and my Washington address is Congress Hall Hotel.

I feel, gentlemen of the committee, that I am addressing you under a very serious disadvantage to me. Those who have been following the course of railroad procedure which this bill is intended to modify and change—a great many of them at any rate—know that I have been very active in this work for something more than a decade, and to come in here at 3 o'clock in the afternoon and attempt to make a statement that would come anywhere near being comprehensive would exceed my best powers of compression.

In the city of San Francisco some months ago, before the Newlands committee and in the presence of Judge Sims and Mr. Esch, I made a five-hour statement. A week or two ago before the Senate committee I made another five-hour statement. Necessarily I had to cover some of the same ground—perhaps a good deal of the same ground. It would seem that after a man has talked for 10 consecutive hours on this particular subject he ought to have pretty nearly talked himself out. The fact is that in that 10 hours' talk, I have only skimmed the subject. If the arguments which I have made before the Interstate Commerce Commission in the intermountain cases, which involve this long-and-short-haul proposition, were put into type, I do not believe that they could be compressed within less than two large octavo volumes. In one speech we make one point, in another we make another point, always trying to get to the same end. Having only about two hours, with your permission, I will endeavor to simply touch the high spots of what I have gone over before, and having done that I will endeavor to answer some of the questions that have been propounded by members of the committee and present some thoughts of my own that have been suggested by those questions.

First, let me say to you that the bill which is now before you is intended to correct the worst abuse that has ever arisen in the conduct and operation of railroads in the United States. If you examine the interstate-commerce law, taking sections 1, 2, 3, and 4, you will find that there are two fundamental propositions presented by the law, and two evils that it is sought to guard against. One is unreasonable rates per se as construed by the courts. That means that a rate shall be just and reasonable, expressed in terms of money for the service rendered. To my mind there is no such thing as a reasonable rate which is a discriminatory rate and which gives an advantage to one person or one community over another. But the courts have held the word "reasonable" down to the mere rate itself, so that if an individual or a community is not charged any more than is just and fair for the service rendered, it is deemed a reasonable rate. But sections 2, 3, and 4 deal with the subject of discrimination. I will not take up sections 2 and 3 in detail, as it would require too much time.

Section 4 deals with a particular kind of discrimination, a discrimination which is manifestly and palpably wrong upon its face.

The charging of more for a shorter haul than for a longer one upon the same line in the same direction, the shorter being included within the longer, is *prima facie* wrong and has been so declared by the Interstate Commerce Commission itself. To my mind it is not only *prima facie* wrong, but it is wrong all the way through, and it is so intrinsically wrong that I do not see how any man who has a just conception of the difference between right and wrong can seriously undertake to defend it under any circumstances.

Now, gentlemen, you can not have failed to note that every person who has appeared before you in opposition to this bill has either been the representative of a railroad or of some community or some special interest to be subserved by a violation of the long-and-short-haul principle. Every question that has been propounded by members of this committee has led us right to that identical point. My friend, Mr. Esch—you will pardon me for referring to you—mentioned the case of the people up in his neighborhood, in his part of the country, desiring to get coal at a certain rate, and if they could not get it they would have to go out of business. It is all right for his people to get their coal just as cheaply as they can. Nobody objects to that, provided it can be done without doing injustice to somebody else. But neither his people nor any other people have a right to get the very lowest rate at which a railroad chooses to transport coal to them, if it is going to work an injustice to somebody else who lives along the line of that road and who has a shorter haul. I want to say right here that every argument that I have heard seems to rest upon the idea that the demand of this bill is that the people living at the nearer points should have lower rates, because of the shorter haul. There hasn't been a single illustration given by any member of this committee—there hasn't been a single question propounded which can not be answered by the provisions of this bill itself. If the railroads can carry freight a thousand miles and deliver it at some profit at the thousand-mile point, all right; but if it can be carried a thousand miles and delivered there at some profit, then I am wholly unable to see why a point which is only 500 miles distant from the point of origin should not receive the same rate. Grant, if you please, that the return at the farthest point is a little less than the railroad might fairly expect to obtain; grant that the same rate applied at the 500-mile point would not yield quite as much as the railroad might fairly and reasonably expect to obtain, but let me ask you, is the right of a railroad to earn money the only thing to be considered? Are not the rights of the people living along the line of that road, and who are contributing to the support of it—are they not also to be considered? Franklin K. Lane in one of his leading opinions in the Twenty-first I. C. C., the first fourth-section case, said that people who patronize a railroad are entitled to something more than just a reasonable rate. They are entitled to a nondiscriminatory rate.

The railroads are not built in this country for the one sole purpose of enabling the projectors of those enterprises to make money. They are built for the benefit of the country as a whole, and they are supported by the country as a whole, and here is the point that has been steadily lost sight of—as it seems to me—through this entire hearing, that when you lower the rate at the farther point in order to meet competition—and I may take issue with my friend Gov. Sanders on

this point—whether it is rail or water, the very moment you lower that rate at the farther point to meet the competition, keeping the rates up at the nearer point on the same line, you are creating a discrimination which places the nearer people at a disadvantage in the doing of their business. It doesn't seem to me that it is possible to get away from that proposition.

Sitting here the other day one of the members of the committee brought up the matter, as an illustration, the case of two railroads which come together like a bow, one railroad being the short line, representing the string, and the other representing the wooden part, the bow. The bow of course would be the long line. I trust that it will not be considered vain if I say to you that that illustration originated with me, whether it is of any particular value or not. I used it before the Senate committee. It seemed to make an impression upon the committee. It came to me suddenly on the spur of the moment, but as I think it over it seems a good one. Now, I want to put this proposition as bearing upon the railroad situation, and going to the question of rates. Why was that longer road made following the line or curve of the bow from point A, we will say, to point B? There must have been some reason for it. The railroad company never built that longer line merely to have more mileage, merely to spend more money in the purchase of rails and ties and the building of stations and digging tunnels and all that sort of thing. They must have had some reason for it. They may have pursued that circuitous route because it was the best grade, because it was easier to travel; and while it was longer in mileage, it might have been the cheaper way to get from point to point. That is one motive. If so, then there is no reason why they should make any lower—or have any higher rate all along that line than for the shorter line, if it is just as good as the shorter line is.

Another reason probably, however, is that in making the circuitous route they swung out around in order to take in different and sundry towns that they could not otherwise reach and get business that went all along that line. On a road of that kind, 500 miles in length, there might be 50 points along that circuitous route, each one of which would contribute to the support of that railroad. Suppose after all that is done, they get to the farther end, 500 miles away, and there meet another road. Suppose they do have to lose a little business at that point, and suppose that after losing the business at that point, they still have a good fair return upon the entire investment. Isn't that all they can reasonably expect? It surely must be. Unless there is some good reason for the construction of that circuitous route, then to make it longer than was necessary to get from point A to point B is a useless expenditure of money and a waste of transportation energy. All railroads seek to get the shortest line they can for operating purposes, while at the same time, as has been shown repeatedly here, they are constantly seeking to adjust their rates in such manner as to get the longest possible haul—for instance, carrying it from point A to point B and then carrying it back half way along that line.

Mr. SHAUGHNESSY. A long haul plus a double haul.

Mr. BARTINE. Long hauls and double hauls.

I want to emphasize what my brother Shaughnessy said with reference to Senator Bristow's statement as to the situation in Kansas.

There is one thing that occurs to me, and I speak of it merely to direct your attention to it, and I hope you will read it carefully. He referred to the circumstance that through the efforts of the railroads to build up a great terminal at Kansas City the effect was that every steer that went from the western point of production to that terminal at Kansas City covered that track forward and backward three or four times over in the course of his life. You will find it all set out there in detail. I can not follow it, because I can not remember everything he said.

Mr. ESCH. That is because of the fact that the feeders take them out and feed them and then send them back to market.

Mr. BARTINE. Yes; that is it exactly.

Now, I am not going to deny to you gentlemen that this movement for an ironclad long and short haul has grown very largely out of what are known as the intermountain rate cases. In fact, I take a good deal of pride in the fact that it has come to this head, and I think I speak the sentiment of my associates upon that point. A dozen years ago those intermountain rate cases were begun. The Spokane case in 1906, the Reno case in 1908, the Phoenix and Salt Lake cases about the same time as the Reno case—possibly a little later—those four together constituted the intermountain rate cases. We fought them along year after year. We have proved as conclusively as any case was ever proved in a court of law that the rates charged at the intermediate points were excessive and unreasonable per se, and that the lower rates applied at the coast terminals were not in truth and in fact forced by water competition, although that was the pretext. We have fought those cases with a small measure of success for about 12 years, and we have at last got results. That is a little too long, gentlemen, to wait for justice. The last order proves that our contentions were right, and inasmuch as our contentions were right all the time, we should have had relief in less than 10 or 12 years.

The plea of the railroads—and this covers the entire country, because these intermountain cases are nation wide in their effect—if I had time I would read to you from Chief Justice White's opening statement, on the fourth section cases, showing that the intermountain cases in their effects cover the whole United States, east and west and north and south. And for that reason reference to the intermountain cases will throw light upon the situation throughout the country generally. I want to pause here and say—and you will pardon me if I repeat an illustration which I made use of before the Senate committee, because I can not think of anything better. When any man convinces me that it is right for a baker to charge more for one loaf of bread of a given weight and quality than he does for two loaves of bread of the same weight and quality, at the same time and place, then he can convince me that it is right for a railroad to charge more for hauling a ton of freight 100 miles than it does for hauling the freight that 100 miles and then a hundred miles more. When you can convince me of that, you can convince me that I am wrong on this question. And that brings me back to the proposition that I touched upon at the start. Every argument has been to the effect that a railroad must be permitted to get business wherever it can, even though it be only at a little more than out-of-pocket

cost; and that every community shall have a right to buy in as many markets as it can; all of which is absolutely true if it can be done without injury to anybody else. That brings us right to the crux of this question, that is what lies at the foundation of the objection.

Take the section to which Mr. Esch referred. Now, it is all right for them to get their coal as cheaply as they can, but suppose they get their coal at a \$3 rate per ton and another point 500 miles nearer to the source of supply of coal has to pay \$5, isn't it self-evident that that nearer point hasn't the slightest chance of building up business in competition with the point to which Mr. Esch refers? Why, it is as clear as light.

Mr. ESCH. There is no long-and-short-haul question concerned with the case I cited.

Mr. BARTINE. Then it has no bearing on this bill.

Mr. ESCH. No; I brought it up in connection with the establishment of arbitrary zones in the distribution of coal.

Mr. BARTINE. Let me say, in regard to your zones, that there is no reason in the world why the zone lines could not be changed. They have been changed in the past, and if it is necessary to change them again in order to comply with the law it can be done. The railroads never hesitate to change the lines of the zones whenever it is necessary to do so.

Now, then comes the question, Why do we want this law amended? It is constantly thrown into our faces, in the Senate committee and here, that if we proceed to amend the fourth section in some way we are casting an imputation upon the Interstate Commerce Commission, and it is plain to note that the railroad people and everybody who expect a favorable decision at the hands of the Interstate Commerce Commission is here armed cap-a-pie, booted, and spurred in defense of the Interstate Commerce Commission. I want to say to you, gentlemen, that I do not know of any branch of the American Government that is above criticism. I have heard the House of Representatives criticized; I have heard individual Members of the House criticized; I have heard the Senate criticized; I have heard the President of the United States criticized, and I do not know of any reason why the Interstate Commerce Commission should be immune. I want to say to you as I proceed and comment upon some of the things which the Interstate Commerce Commission has done, which will be in the line of criticism, that it will not be quite so direct and pointed, as severe as the criticism which I have leveled directly at that commission when making arguments before it. I have said to that commission that in making their sweeping fourth-section orders, covering the whole United States and calling them "special," they had not only violated the plain meaning of the statute, but they had violated the principle of natural justice at the same time. You could not make a statement to a semijudicial body any plainer than that, could you? I have said to them that even if they were right in the law the evidence did not justify them in the orders which they made. I have said to them, and I say to you, that you can not go into a justice court and recover a calf in a replevin suit upon the basis of such testimony as that upon which they made these sweeping orders covering the whole American continent, because every particle of testimony upon which they acted was simply in the line of loose conjecture and guesswork.

This whole abuse to which I have referred has become settled in the policy of the Interstate Commerce Commission. And it began long ago. It began in this way: Cases arose before the law was amended, in which a higher charge was made for the shorter than for the longer haul, and the people living at the nearer point made their plea that they were being discriminated against because they were being charged more than their neighbors on beyond were. Those cases went before the Interstate Commerce Commission and finally into the Supreme Court of the United States, and there it was held that there was no violation of the law, because the lower charge at the farther point was justified by the plea of competition at that point which did not exist at the nearer, and therefore the conditions were not the same. In other words, the difference in charge was not made under similar circumstances and conditions—to borrow the formula of the statute. Well, now, the people that brought those cases did not have any proof at hand with reference to the reasonableness of the rates at either point, and the cases went off as a cold question of law. The statute had not been violated. But taking those decisions as a basis, the Interstate Commerce Commission has established the policy of allowing railroads, where they meet water competitors and others, to lower their rates in order to meet the water competition. And this, it is claimed, is within the fair meaning of the statute. I will not say that in a proper case it is not within the fair meaning of the statute. It is clear that the amended fourth section does contemplate that some exceptions may be made to the general rule, but it has been shown before this commission that the applications have been so numerous, that the orders granting relief have been so numerous, and that they have been so broad and sweeping in their character that the exemptions have practically become the rule, while the ironclad provision is merely the exception. The very fact, gentlemen of the committee, that immediately after the enactment of this law there were 11,600 applications made to the Interstate Commerce Commission for exemption is an exceedingly strong argument in favor of the abrogation of the exemption feature, and bringing the country right down to the ironclad long-and-short-haul rule. Upon that point I want to say to you that there is no question as to its constitutionality. The decision by the Supreme Court in the fourth section cases set that question forever at rest. You will find it in the Two hundred and thirty-fourth U. S.

The exemption clause comes in the form of a proviso. Speaking generally as lawyers we may perhaps agree that usually a proviso is the strongest part of a statute, but when the proviso is in the nature of an exception or an exemption from a general law, then it is not the strongest part of a statute, because every well-grounded lawyer knows that exceptions and exemptions are strictly construed, and that those who claim the benefit of an exception or an exemption have the burden cast upon them to show that they are entitled to it. I do not think there is a lawyer between the two oceans who will deny this principle. Now, how has it been handled? The Interstate Commerce Commission has said repeatedly in its opinions that the burden is cast upon the carriers to prove that they are entitled to the exemption, and if they had only acted in accordance with that general declaration it would have been all right. They state the point correctly in principle, but they do not act upon it. All the way through these

intermountain cases—and when I say this to you gentlemen I am speaking by the record, and I challenge truthful contradiction from any source—those representing the intermountain points bringing these cases have held the laboring one. They have furnished the preponderance of proof right along. Now to illustrate—this is in the nature of a repetition. Judge Sims will remember it, and Mr. Esch will remember it, but Gov. Sanders will not because he was not there, and neither was Mr. Snook.

The point made by the railroads in justification of the higher charge at Reno than at San Francisco was that at San Francisco they had to meet water competition, which forced their rates down to a point that was not compensatory. It was a compelled rate. Now, it occurred to us—and I am not going to bring myself into this matter, although I had a good deal to do with it—it occurred to us that that might be true: that the rate at San Francisco might not be fully compensatory, and yet by reason of the shorter haul at Reno and the enormous saving of expense in not having to haul freight over that lofty mountain range, it might make that same rate at Reno highly compensatory. You see that point, don't you? It is as plain as A B C; just as plain as that 2 and 2 make 4. We had on our commission at that time a professor of mathematics attached to the University of Nevada, and having that idea in mind I said to him, "Prof. Thurtell, can you take this westbound traffic of the Southern Pacific Co. and assume that it is all left off at Reno and charged for at the San Francisco rate, and figure up what return that will give the company?" He said he thought he could. He went away, and in a week he came back with his figures. I am not going into any detail, but I am going to give you just one which illustrates it. What do you think he showed? He showed that the terminal rates as they were then in effect at San Francisco, applied at Reno, would give the Southern Pacific Co. almost 14 per cent return upon a valuation of \$80,000 per mile, which was more than the road would cost. And I want to say to you, gentlemen, that those figures were introduced nearly 10 years ago. They have never been broken down. They have never even been controverted. The railroads fell back upon the ridiculous plea that you can not determine the reasonableness of a rate by mathematical calculations; but when the rates do not figure up to the measure of their desires, do they ever hesitate to resort to mathematical calculations to show that they ought to have higher rates in order to get enough money? Prof. Thurtell's figures, given in the Reno case, made such an impression upon the Interstate Commerce Commission that at the close of the first hearing they tendered him a position in their employ. He has been there ever since, and is to-day one of their most trusted lieutenants—one of their highest ranking examiners.

I have never taken the position that we should cut rates generally because a road may be earning more than we think it ought to earn, but in that case we were simply meeting railroads upon their own ground. They claimed that the rates at the coast were not fairly remunerative. Well, that of course brought up the question at once as to what was fair remuneration. In the Spokane case it was held that 7 per cent was excessive, considering the enormous investment, the enormous amount of money involved. Seven per cent on four or five hundred million dollars is a pretty good return. Well, as I say,

if that were true, then 6 or 7 per cent in San Francisco would surely be a fair return, and it follows inexorably—it followed mathematically—that if they were realizing a return of nearly 14 per cent at Reno, if they hauled it on over the mountains to San Francisco, the return could scarcely fall below 6 or 7 per cent. That represented about half of the total haul of the Southern Pacific Co., and it was the Southern Pacific Co. that was making all the excess charge that we were complaining of. Every dollar of that excess charge, claimed to be the result of water competition, was an arbitrary, imposed by the final carrier alone, and carried into its own treasury. It was not a question of division at all, and my former statements will show this in detail. It is perfectly evident, gentlemen, that if those low rates at the coast—those that were claimed to be low—were forced down by water competition, then every rail carrier engaged in that haul and connecting with each other was equally affected by it, and yet the low charge there was accepted by all of the other rail carriers as fair and reasonable, and they took their just proportion of it—I think something like 54 per cent—it does not make any difference what it was—and they divided the \$3-rate on first-class goods among them; and then the Southern Pacific Co. arbitrarily, of its own sweet will, imposed what is popularly known as the “back-haul” charge, which on first-class goods at that time was \$1.29, which was the local rate from Sacramento, the nearest terminal, back to Reno. Taking these things all together, it was perfectly evident that water competition was not the true reason for the discrimination against the intermountain country.

Mr. Shaughnessy referred to the fact that the out-of-pocket cost can be determined. It can, of course, where traffic moves as he explained, in carload lots, train load lots and all that. In fact, he and Prof. Thurtell together figured that out very closely in one of our local cases, comparing the expense of running a local train with that of running a through train. Of course, where the train load is made up of mixed merchandise, with several different kinds in one car, perhaps, it is impossible to take one particular commodity out of a train load and say just what it costs to carry that commodity, because if it were taken out, the train would go on just the same and would cost practically the same.

Mr. ESCH. In those investigations did you seek to determine the percentage of such cost arising out of wear and tear to rolling stock and road bed?

Mr. BARTINE. No; I believe not.

Mr. SHAUGHNESSY. Yes; we did that.

Mr. BARTINE. Well, I did not know about that, but it would not make any difference whether they did or not, Mr. Esch, because when it resolves itself simply into a transportation proposition it must be just the same. Whether you take the whole business or whether you take simply the cost of transportation—and I am coming to the matter of wear and tear in dealing with this very matter of out-of-pocket cost, and I am going to do it for the purpose of showing you how utterly fallacious it is; and like Mr. Shaughnessy I absolutely differ from Mr. Lyon on that point.

Mr. ESCH. I know that Mr. Erickson, of our railroad commission, made such a determination in our State.

Mr. SHAUGHNESSY. He is one of the recognized authorities in the United States. We followed Mr. Erickson's plan, because I was later in Madison and compared with him his method of segregating and assigning costs, and Prof. Thurtell and myself had followed substantially the same method that he followed, and we had assigned to the through train its proportion of all cost, maintenance of way, maintenance of equipment, transportation and traffic and general overhead expenses and everything of that kind. And, Mr. Esch, I want to say for your information, that the actual cost of operation which I read into the record here is made up on that basis.

Mr. BARTINE. Now, as I have only a little time, I trust I may be permitted to go on. It is not necessary to meet and explain every point that is suggested, because when you come to the question of comparison between the through rate and the local rate, the wear and tear of the track really does not cut any figure. It does not make any difference whether you take all or just take simply transportation charges, because the wear and tear on the track is the same whether the car is going through or is confined within the State. There is no material difference so far as I can see about that, or with reference to the equipment.

Now, here is the point—and it emphasizes what I have said before: The Interstate Commerce Commission, acting upon insufficient testimony, and the courts, acting upon insufficient testimony—in the case of the courts, the courts were excusable because when the railroads appeared there and testified that they were carrying the freight through to a point of competition at something above the out-of-pocket cost, and there was no testimony on the other side, there was nothing for the court to do but to accept that statement. That is all there was, and therefore it was assumed at all times that this freight carried through to the terminals was carried at something above the out-of-pocket cost; that is to say, it brought a little more money into the treasury than it took out. Well, the court's action was all right; but the Interstate Commerce Commission is the tribunal which is vested with jurisdiction to determine the facts, and that tribunal, before granting these exceptions, should have demanded specific testimony bearing upon this question. I am going to repeat now the substance of a colloquy that took place between myself and the chief traffic man, who testified on behalf of the Southern Pacific Co. in the Reno case, Mr. George W. Luce, general freight agent. I cross-examined him at Salt Lake City, and he stated, among other things, that their through traffic to the coast was carried at less than a fair profit but at something above the actual cost of transportation. I said to him: "Mr. Luce, how much does your traffic at the coast point yield you in excess of the cost of carrying the freight there?" His answer was: "I don't know." "Well," I said, "if you don't know, how do you know that it yields you anything above the out-of-pocket cost?" Well, he knew it from his general understanding of the railroad business. Now, I will ask you gentlemen as lawyers, how far you think you would get in a court of law on the basis of testimony of that kind? A little later, I said to him: "Mr. Luce, you say that this freight hauled to the coast fails to give you a full and fair return, do you?" He said: "Yes." Then, I asked him: "How much does it lack of yielding a

fair return?" He didn't know. "Well," I asked, "how do you know that it lacks any?" He said: "Well, from my general knowledge of the business of the company"—the same thing right over again. There isn't a word in the entire record of all of those intermountain cases—which altogether will make a stack as large as this table—which controverts that simple proposition which I have presented to you to-day, and I am doing it simply for the purpose of showing to you the character of the testimony upon which the railroads were allowed to make these differentials against the intermountain country and in favor of the coast terminals upon the specious plea of water competition. I am doing it for the purpose of pointing out the danger of leaving an authority of that kind in the hands of any body. It is no imputation upon their intelligence or their integrity, but they are not infallible. The courts are criticised, too, hundred and hundreds and thousands of times. The laws are modified and amended, or absolutely repealed because the people are not satisfied with the interpretation which the courts have placed upon them. Every lawyer knows that; and, as I said before, the Interstate Commerce Commission is neither infallible nor immune.

Now you must bear in mind that the power to grant exemptions which is vested in the hands of a commission like this is a power to destroy. The commission can grant exemptions that will absolutely destroy the competitor. It can grant exemptions which will absolutely destroy one community while building up another—and it is being done right along. When the community which has thus been favored is built up to colossal proportions, it is then in a position to bring a gigantic influence to bear to prevent any change in the law or the policy, because they have vested rights, as they claim. Yet we have had strong appeals put up here, "Why not leave it all to the Interstate Commerce Commission?" Why, I ask, have any details in the law at all? Why not simply create an Interstate Commerce Commission and direct that commission to regulate and control the railroads; see that the rates are just, reasonable, and non-discriminatory; that the safety appliances are all right; and stop at that? And yet you have a lengthy law comprising many sections going into an infinitude of details, telling the commission what to do and what not to do. The fourth section, the long-and-short-haul clause, is simply one of those many provisions, and the events of the last 10 or 12 years—more than that even—show that that provision of the law, that principle of transportation, has been violated to a greater extent and has been productive of greater evil than any other kind of discrimination denounced by the statute. And for that reason it was made the subject of a special section.

Why, Franklin K. Lane himself said it was singled out and named specifically because it is a form of discrimination that is *prima facie* wrong, and, as I said before, it is wrong all the way through. I don't believe the man ever lived under the blue sky of heaven who can show a single instance in which it is justifiable to charge more for the shorter than for the longer haul on the same line in the same direction and for the same commodity; that is, if he takes the whole situation into consideration. If he looks simply at the interest of the railroad and assumes that it is necessary for the railroad to get business wherever it can, without actually paying out more money than it takes in, he can defend it from that standpoint, and that is what

the railroads do. If he takes the position of our coast cities, or any other great terminal that is in the enjoyment of specially preferential rates, and which chooses to argue that it is necessary to have those preferential rates in order to grow and thrive and prosper, he can defend it from that standpoint. But what does he do with the intermediate people who live along the line between? Have they no rights that the Government of the United States is bound to respect? And let me call your attention to this fact, gentlemen: It has been brought out here—I am speaking in a very disjointed way, but I can not help it. I have no written speech. The arguments made against this bill—some of them I have heard myself—would lead to the conclusion that the wealth and population of this country should be practically concentrated upon the coast lines of the country.

Now, how does that strike you, gentlemen? Do you think that is sound doctrine? The tendency of this policy of which we are complaining is to concentrate it upon the Atlantic seaboard and upon the Pacific seaboard and upon the Gulf coast line. I want to say to you that the coast line is the danger point of the United States. The ordinary guns of the great battleships which we have to-day can reduce to ashes more property, measured in dollars, than is contained in the whole Empire of Austria. And who is it that has to defend those cities? The danger points are great cities, such as New York and Chicago, which have been favored as a market proposition—and San Francisco—they are the haunts of vice and crime, and they are the abode of widespread poverty. People talk about our little State of Nevada, the baby State of the Union in point of population, but I want to say to you, gentlemen, that you can not go into the State of Nevada and find any man selling shoestrings at a penny a pair, unless he is somebody that has just been suddenly dropped off the train. But you find them on every corner in your large cities.

MR. HAMILTON. You have no change there less than a nickel, do you? [Laughter.]

MR. BARTINE. Oh, we have got down to the penny basis now. They never expect to get less than a nickel, anyway. The men who do that are men that just drop in casually, and it is simply a form of begging. I am only speaking of the difference, and how unwise it is to attempt to concentrate all the business and population at certain great centers in the United States. It is vastly better for this country to have the wealth and the population somewhat equally distributed throughout the whole United States. And you will pardon me if I make use of another illustration that I have used before. I have called attention to the fact that if you were to take the city of New York out of the great Empire State, which has more wealth and population than any other State in the Union, and also take the city of Philadelphia out of the State of Pennsylvania, Pennsylvania will be richer, more populous, and a more prosperous State than New York. New York outside of Greater New York does not compare with the State of Pennsylvania if you exclude the city of Philadelphia, and I think the records will bear me out in that statement. Go into Illinois and take the city of Chicago out of Illinois—a hotbed of sedition and poverty and vice—and then take out of Ohio the largest city Ohio has, and while Illinois is 16,000 square miles larger than the State of Ohio, Ohio will then be the

more populous and the richer State of the two. The wealth is concentrated in Chicago, and I submit that it would be a great deal better if a portion of that population and wealth of Chicago were diffused throughout the State as a whole. It would mean very much greater productive capacity in the State. I don't want you to understand for a moment that I am so lacking in point of intelligence as not to appreciate the fact that there are bound to be great centers of population and wealth in every country. What I am trying to make clear is that they should not be artificially stimulated by giving to those points especially favorable transportation rates.

Mr. HAMILTON. Unfortunately, however, they are too much recruited from the country nowadays.

Mr. BARTINE. Undoubtedly, yes. Of course, aside from the question of transportation, those large cities become the centers of wealth, and wealth begets wealth. So it goes on by accretion, and the man who works out on a farm thinks he can do better in the city, and he floats off into the city.

Mr. HAMILTON. He is very much mistaken about it, however.

Mr. BARTINE. Yes; I think that is true in a great many cases.

I want to go one step farther now on the question of the propriety of amending the law and making this provision ironclad, and it in answer to the claim that the Interstate Commerce Commission should be entrusted with the execution of the law and making exemptions in proper cases.

Before Mr. Hamilton came in I had endeavored to make clear how and why I thought the Interstate Commerce Commission had most egregiously exceeded its powers and abused the provisions of that section by making general and sweeping orders covering the whole United States and calling them "special." If that is special, then I don't know the meaning of the word. If the word "special" were not there, and the Interstate Commerce Commission could not have made any broader or more sweeping orders than it has made, and we are bound to consider that Congress in using the word "special" had some purpose in doing it. It is another rule of law that we should interpret a statute in such a manner as to give force and effect to every word it contains, if it can be done. Isn't that so?

I have shown how easy it is to abuse a provision of this kind and how serious the result when the abuse actually takes place. The granting of a free pass to somebody is not a very serious matter, but if you grant exemptions and exceptions from this long-and-short-haul clause which enables one point to grow and thrive and prosper inordinately at the expense of other communities, that is a very serious thing, and if it should ever be done at all it ought only to be done upon the clearest and most conclusive evidence; whereas, as I have said, these orders have been made upon the basis of conjecture and guesswork, because the railroad people themselves have never attempted to show what the force and effect of the competition was which they had to meet.

In all the States we have State constitutions. The legislature is vested with the general power of making laws, but there are some things which are deemed so vital to the people that there is a constitutional safeguard imposed, and the legislature is prohibited from doing those things. That same principle is involved here, as we view this law. I can not imagine anything which is more likely

to be abused than the provision which we are attacking and which we seek to remedy by an arbitrary ironclad long-and-short-haul law.

In defending the Interstate Commerce Commission I remarked that the railroad people and the favored points are always ready to come to the defense of that commission when they feel that they are reasonably assured that its action will be favorable to them. But they never fail to make a contest when they don't like it. When the first fourth-section order was made—you gentlemen may remember—it was general in its character, and the railroads, 17 in number, petitioned to be entirely exempted from that provision, and be permitted to retain rates then in effect. The Interstate Commerce Commission did not grant the full measure of the petition. It granted them something. It made an order which provided that from the Missouri River territory into the intermountain country the rates should be no higher than to the coast; that from Chicago and points west the rates should not exceed those to the intermountain country more than 7 per cent; from the Pittsburgh-Buffalo line by not more than 15 per cent, and from the Atlantic seaboard by not more than 25. The railroads did not like that. They did not love the Interstate Commerce Commission quite so well then as they profess to now. They at once rushed into the late-lamented Commerce Court for relief. They did not dare to go there and say that the Interstate Commerce Commission had not marched up to the measure of their demands, because to whatever extent the commission failed to give them all they asked for, to just that extent the order was negative in its character, and under the rulings of the court it was not appealable to the courts.

It was not a matter for the court to pass upon. If the court undertook to do so, it simply resolved itself into a rate-making body, which everybody knows a court is not. So they took their appeal on purely technical grounds and alleged the Interstate Commerce Commission had exceeded its authority by establishing a relation of rates instead of establishing rates that were reasonable, *per se*. And they also declared or alleged that the law was unconstitutional because there was no standard set by which the Interstate Commerce Commission could make its orders of exemption. Well, the Interstate Commerce Commission recognized that the latter point was well taken, but they invoked the principle laid down in the statute as a whole, that all rates must be reasonable, and in making any exemptions under the fourth section they must have in mind that general principle of reasonableness in rates. The Supreme Court of the United States sustained that view and said that in dealing with the fourth section you must also consider the first section, which provides for reasonable rates, and the second and the third sections, which in general terms denounce discrimination. That we can not take the fourth section and consider that by itself, but all must be considered together.

Now, then, what happened? The Commerce Court sustained the railroads in their contention, not that the law was unconstitutional, but that the commission had exceeded its authority in establishing a relation of rates in contradistinction to reasonable rates, and they granted a permanent injunction. What then? The order made by the Interstate Commerce Commission in that case was absolutely

the only thing that stood between the railroads and the ironclad rule of the law. Now what course should the commission have pursued in a case of that kind? I know what I would have done if I had been a member of the commission. I would have said: "Gentlemen, you say that this order is void. In the absence of this order there is nothing between you and the law. Now you adjust your rates in conformity with the law." That is what I would have said. But instead of that, the Interstate Commerce Commission itself took an appeal to the Supreme Court of the United States, and we had the anomalous spectacle presented of the Interstate Commerce Commission defending an order which gave to the railroads a large measure of exemption, and the railroads themselves fighting that order in the Supreme Court of the United States. Is it any wonder that lawyers and even intelligent laymen who are familiar with the course of these intermountain cases feel that the Interstate Commerce Commission is fairly open to a little criticism? What was the effect of all that? It took nearly a year to get the case to the Supreme Court, and it took about two years more to get a decision. It was argued and submitted, and then there was a death on the bench and a new justice was appointed, and then they reopened it for argument again; and from the time the order was made until it was finally upheld and confirmed by the Supreme Court of the United States about three years elapsed. During all that time the intermountain country was right in the air, absolutely denied every measure of relief.

We could not take any other step, because those cases that were pending covered the whole ground. We would have been met immediately with the plea that the whole matter was covered by the cases which were then in court. There we were tied up for three years. Within a month or two after that—after the decision was rendered—the Panama Canal was opened. What then? Immediately the railroads mentioned by the intermountain orders applied to the Interstate Commerce Commission for a modification of the order, upon the plea of the intensified competition through that national waterway. They presented what they called "Schedule C," containing two or three hundred articles, representing about 80 per cent of their entire westbound tonnage which reached the intermountain country and the Pacific coast. There were very few commodities, by comparison, but heavy in tonnage, such as structural iron and steel, and those heavy things. And I may say here that structural iron and steel represents about one-fourth of the entire westbound freight carried by these railroads to the coast and the intermountain country. That is the reason why that item is so frequently spoken of as illustrative in these discussions. They asked leave upon the Schedule C articles to reduce their rates, ranging anywhere from 16 to 25 per cent below what they then were, to enable them to meet this competition through the canal. Now, mark you, year in and year out they had been claiming that their rates to the coast points just barely covered the cost of transportation and a little more; and yet in order to meet an intensified competition they actually go before the Interstate Commerce Commission, and upon the great bulk of their freight they asked leave to reduce those rates 15 to 25 per cent more. Now, I will take up structural iron and give

you an illustration which I have used before, because it is one that absolutely can not be answered, and I can think of none better.

Mr. HAMILTON. How did they account for that apparent inconsistency?

Mr. BARTINE. They have absolutely never accounted for it at all, and that is the reason we criticize the Interstate Commerce Commission so strongly.

Mr. HAMILTON. Didn't they discuss it anywhere?

Mr. BARTINE. Why, just in general terms. That is all, but they don't go into details.

Now, let me give you some figures. I can give them to you right out of my head. The rate from Pittsburgh to San Francisco on structural iron was 80 cents per hundred, \$16 a ton. To Reno it was 80 cents plus 62, the back haul charge from Sacramento, which was the nearest terminal, \$1.42 all together. That was before the canal was opened. Now, they went before the Interstate Commerce Commission and they asked leave to reduce the rate on structural iron and steel from 80 cents to 65 from some points and 55 from other points, claiming always that the 80 cents was an unremunerative rate; that it brought them something just a little above the out-of-pocket cost. Now note the difference between the 80-cent rate and the 55-cent rate, 25 cents on a hundred, \$5 on a ton, \$200 on a car of 40 tons, \$10,000 on a train of 50 such cars. They were willing and ready to wipe out \$10,000 of revenue upon a single train when they claimed that the revenue was already too small. What do you think of that now? That is the undisputed evidence before the Interstate Commerce Commission. And the order to do it was granted.

Mr. SANDERS. Could both of those rates, the 80-cent rate and the 55-cent rate, could they both have been out-of-pocket plus?

Mr. BARTINE. You never heard anything else.

Mr. HAMILTON. One may have been a good deal out-of-pocket plus, more than the other.

Mr. BARTINE. The point is simply this: They could not have asked leave to put in a 55-cent rate unless in their view it was a compensatory rate; that is to say, it had to be something above out-of-pocket cost. If the 55-cent rate will yield them something above out-of-pocket cost, what must the 80-cent rate yield them when there is no increase of expense at all?

Mr. HAMILTON. They might want to do business on a smaller margin.

Mr. BARTINE. Don't misunderstand me in urging these matters so earnestly. They may not seem to have any immediate and direct bearing on the long-and-short-haul proposition, but I am bringing them out to show you how easy it is to abuse the exemption clause in that section, and how it has been abused.

Before Mr. Hamilton came in I had stated that both before the Senate committee and this committee every opponent of this proposed legislation either represented a railroad, a combination of railroads, or some community which was in the enjoyment of preferential rates or had been, and expected to have them restored after the war was over and normal conditions were brought about again; or some special industry which was claiming an exemption upon the ground that it was necessary for it to get to present markets with its goods. I want to say to you, gentlemen, that I do not represent

any special industry. I do not represent anything in particular except the whole State of Nevada, including the railroads and every industry that is located within that State. And I would not willingly do an injustice or an injury to a railroad any more quickly than I would to the shipper. We are not looking for anything in the way of special privileges or advantages, and all that we ask in the enactment of this law is to have a condition created whereby a man shall not be compelled to pay more for the transportation of his goods 100 miles than somebody else is charged for the transportation of those same goods 100 miles farther on. That is a fair proposition and a conservative one.

If you put the farther point of production—suppose it is iron and steel; suppose you put Pittsburgh and Chicago on the same footing. There is nothing in the world to prevent Pittsburgh from selling its product in competition with the product of Chicago—nothing in the world. Of course, if Chicago had a lower rate proportionate to the shortness of the haul, then Pittsburgh would be at a disadvantage. As a matter of fact that is the way it ought to be, but this bill does not go so far as that. It simply asks that there shall be no higher charge from Chicago than from Pittsburgh, and that leaves the man who wants the Pittsburgh iron and steel, or the Chicago iron and steel, open to a selective market. He can go to either.

Now, I want to touch on this matter of out-of-pocket cost, because in the way it has been used it has been productive, perhaps, of more harm than any other fallacious argument that has ever been made in connection with a rate case. I want to say to you gentlemen of the committee that out-of-pocket cost plus some infinitesimal fraction means a dead loss on that business. The Supreme Court of the United States does not say that. It says that if it brings in more money than it costs to handle the freight, it carries more money into the treasury than it takes out, and therefore it swells the aggregate income of the company. That sounds plausible, but how does it work out in practice? Let us look at it. Suppose you have a railroad, the total expenses of which—operating expenses—are \$2,000,000. The evidence in the intermountain cases shows that the transportation charges represent just about one-half of the total. Now, suppose that freight is carried to a certain point and a large quantity of it over that line of road is carried at a rate which will pay the transportation cost of \$1,000,000 and, say, 1 per cent to the good. You have got \$10,000 net out of that business. You have got \$990,000 more to make up. Where are you going to get it? Out of the rest of the business, of course. How, then, can it possibly be said that it does not cast an additional burden upon the remainder of the business?

Let me carry the illustration a little further and give one in addition and supplementary to the one I have already given. Let us suppose you have a railroad 800 miles long, like the Central Pacific. Suppose that one-half of the business of that road goes to the terminals—and the testimony was to that effect in the Reno case, that one-half went to the coast terminals. Let us suppose that that one-half must be carried at less than out-of-pocket cost—at a dead loss. If the railroad company expected to keep up its earnings it would certainly have to raise rates somewhere else to do it. That is perfectly

clear. Now, there is literally no difference in principle between carrying the goods at an absolute loss—that is, less than out-of-pocket cost, and a shade above. The difference is only in degree. That is all there is to it. This brings me to another point that has been urged upon these committees, and that is that if these railroads have to forego business at the terminals they will recoupe for the loss by raising the charges at the interior points. Well now, to carry on my illustration, suppose conditions were created on the Pacific coast which put the entire Central Pacific line west of Reno out of business. That is 244 miles, but it represents about half of the cost of the road, because of the expensive construction, snowsheds, great terminals, and the like. I believe terminals is a favorite subject of discussion with Judge Sims. But that is the situation.

Suppose something happened to put that entire portion of the line out of business. Is there any man who has the slightest sense of justice and the slightest particle of intelligence with which to apply the idea of justice who thinks for a moment that the railroad should or would be allowed to double its charges on the remaining portion of the road in order that the whole property should continue to pay a fair return upon its reproduction value? Is there anybody who thinks the Interstate Commerce Commission would allow it to do a thing of that kind? If the Interstate Commerce Commission would allow it, I say to you gentlemen that every member who voted for it should be impeached. The very moment that question arises we are confronted by the question of what is a reasonable rate. The reasonableness of a rate does not depend upon how much money a company is earning. It depends upon what is the fair and reasonable value of the service. Isn't that true? Suppose the whole of the Southern Pacific were shut off from Reno west, the value of the property used in the service to Reno would only be about one-half what it is now, and that would be all they would be entitled to earn anything on if Reno were the terminal. You would have exactly that condition if all the business west of Reno were to be eliminated. It would be just the same as if Reno were the terminal.

Mr. Mann argues—and in arguing it I do not give him any copy-right, because I have made the same contention myself—that these roads would never have been constructed and the intermountain country would never have had the benefit of them if it had not been for the terminal points. That is true, but the argument works against Mr. Mann when you follow it to its logical conclusion. Everyone of those great transcontinental lines was built across the country with the express purpose in view of reaching a coast terminal, and the most of them traversed a country that was to a very great extent unsettled and capable of furnishing very little traffic. Do you suppose that they would have gone to the coast and sought business at that point if it was not a desirable thing to them? What becomes of their contention that the coast business is carried at a rate which is just a little above the out-of-pocket cost? And in going there they ran right into the very teeth of the competition which they claim to fear so greatly.

Mr. Mann made another statement before this committee that I want to advert to for a moment. He spoke of the local business of California—the intrastate business—being so much larger in proportion than the general average. He said that the general average through-

out the United States broke in about equal proportions, 50-50, but he said that the local business—the distributing business—in California stood in the ratio of 75 per cent to 25 per cent interstate business. There he furnishes another argument which absolutely destroys him, so far as this case is concerned, and shows the unsoundness of his position. It is assumed that if the railroads are deprived of the west-bound traffic to the coast ports they will lose so large a percentage of their business that they will have to raise the rates everywhere else, when he shows by his own figures that the quantity which reaches the coast is only about one-third of the quantity that is distributed by the roads locally throughout the State of California. And you must bear in mind that if all of the freight were brought to San Francisco by water, that freight would still have to be distributed and those same roads would do the distributing. It would never come to California by water unless it were desirable and advantageous to bring it in that way, and if it were, that would certainly tend to the upbuilding of the State and lead to a greater demand for goods throughout the whole of the State of California.

Mr. SHAUGHNESSY. And the public would also be entitled to reasonable distributing rates.

Mr. BARTINE. Always. You can always go to the proper regulating body for a reasonable rate. But it is assumed that a railroad can put up its rates at its own volition in order to secure a fair return upon the reproduction value of its property, even though perhaps half of it is unproductive. That is not true. No court ever laid down that rule. It is the general rule that under normal conditions and where the business is such as to justify the construction of a railroad, it will be entitled to make charges that will yield a fair return upon the fair value of the property. That rule was laid down by Justice Brewer in the Regan case, 154 U. S., but he immediately goes on to make the exception that a road may have been extravagantly conducted; it may have been built at unnecessary cost; it may have been built where business conditions did not justify it. In a case of that kind it would have to look into the future for its profits, and it could not expect to realize profits at once by putting rates up to exorbitant figures. We had a case just like that in the State of Nevada, the first rate case I ever tried in court. We had a maximum-rate law on our statute books at that time, providing certain maximum rates above which the railroads should not go. It was contested in court by six of the leading railroads operating in our State. One of them was a new one, what is generally spoken of as the San Pedro road, the Los Angeles and Salt Lake; and it was shown with reference to that road that the rates applied in Nevada would only leave it $4\frac{1}{4}$ per cent return. It was claimed that the $4\frac{1}{4}$ per cent return was not a fair return on property in that section of the country—and ordinarily that is true.

Small loans call for 12 per cent interest out there and large loans 8 per cent interest, and gilt-edged bonds 5 and 6. Ordinarily 4 per cent would not be a fair return upon a railroad. But what did the judge say about it? He said, "This is a new road that has just been constructed through a new country, a sparsely-settled country, and in order to give you 6 or 7 or 8 per cent, that you might be entitled to, you would have to put your rates up to an unreasonable

figure, and that all things considered the rates as fixed by the law are reasonable, even though they only leave you a little more than 4 per cent net."

Mr. HAMILTON. Are the rates on structural steel, say, the same from Pittsburgh to Salt Lake as they are from Chicago to Salt Lake?

Mr. BARTINE. I think they are. They were.

Mr. HAMILTON. Now, suppose you folks in Nevada needed a whole lot of structural steel. Is it an advantage to you or otherwise to have two places of production competing for your market?

Mr. BARTINE. I am glad to answer that.

Mr. HAMILTON. It is an advantage, isn't it?

Mr. BARTINE. Yes, sir.

Mr. HAMILTON. Then, that involves discrimination in favor of Pittsburgh.

Mr. BARTINE. Theoretically, yes; but practically, no; because either one of those places can furnish us with 10 times the steel that we need, and two manufacturers in Chicago compete with each other just the same as a manufacturer in Pittsburgh competes with one in Chicago.

Mr. HAMILTON. Then you think it would be better or just as well for you to have a restricted market, a restricted scope from which to draw supplies, as to have a larger market?

Mr. BARTINE. But let me suggest to you right there, Mr. Hamilton, the question does not go to the meat of this proposition, because under the long-and-short-haul law there would not be anything to prevent the railroads from applying the same rate from Pittsburgh to Reno as is applied from Chicago to Reno. The only restriction or prohibition is upon charging more from Chicago than from Pittsburgh. Now, suppose they charge more from Chicago than they do from Pittsburgh, that would cut us out of the two markets. We would have to go where we would get the lowest rate.

Mr. SANDERS. Isn't it your contention that you do not object to the same rate, but you object to the bigger rate for the shorter haul?

Mr. BARTINE. That is all there is to it. And one-half of the argument that has been made before this committee and the others rests upon the theory that we are asking for a lower charge for a shorter haul. We are only asking for the same charge.

Mr. SANDERS. You are asking for the same charge for 500 miles that they ask for 1,000, but you don't want them to charge more for the 500 than they do for the 1,000?

Mr. BARTINE. Yes; of course that would be the case if this bill should be enacted into law, and after that of course would come in specific instances the question of whether a particular rate was reasonable, and the Interstate Commerce Commission would pass upon that question.

Mr. SANDERS. I understand your position thoroughly.

The CHAIRMAN. You don't think they ought to charge more to Alexandria than the Richmond rate from this city?

Mr. BARTINE. No; of course not.

Mr. SANDERS. But the same charge is all right.

Mr. BARTINE. It may not be all right in all cases, but it is a good point at which to draw the line of limitation. That is what I mean.

Mr. HAMILTON. Isn't that in its essence discrimination in favor of the farthest point?

Mr. BARTINE. No; because the law provides that nothing herein contained shall be so construed as to authorize the same charge for the shorter haul. It simply draws the line and says, "You shall not charge more for the shorter distance than for the longer," but when you get beyond that then it all resolves itself into the question of reasonableness.

Mr. SNOOK. But don't that violate the principle of right that you are contending for, that each city has the right to have the advantage of its situation?

Mr. BARTINE. My dear, sir, we are not dealing with this on abstract principles. We are dealing with it as a business proposition.

Mr. SNOOK. Yes; but I take your argument to be that it was a question of a principle of right that you are contending for.

Mr. BARTINE. Well, of course.

Mr. SNOOK. And justice.

Mr. BARTINE. Certainly; it is a question of right; but we are not demanding all that we might ask for. Judge Prouty asked me that once before. That is not a new question to me.

Mr. SNOOK. It seems to me that this violates the principle just as flagrantly as it violates it now—the principle of right and justice.

Mr. BARTINE. After we have done it, we simply draw the line here and say, "You shall not charge more for the shorter haul than for the long one." Then, if the charge is too high for the shorter haul as compared with the longer one, you can bring it up as an individual case and have the question of reasonableness determined.

Mr. SNOOK. Yes. I understand your contention fully, but I understood you to say in the beginning of your argument—I may not have caught you right—that you are contending for this thing as a principle of right and justice, and as a principle of right and justice every city has a right to the advantage that its situation gives it.

Mr. BARTINE. Yes; all right; I am perfectly willing to meet you upon that proposition. You can contend for a principle upon the basis of right and still stop a little bit short of what you think you ought to have, can you not? Did you ever hear of a compromise in court?

Mr. SNOOK. Yes.

Mr. BARTINE. You may think that a man owes you \$1,000, but you can accept \$500 if you want to.

Mr. SNOOK. Certainly.

Mr. BARTINE. That is where it is.

Mr. HAMILTON. Carrying it to its logical conclusion, then, you say that, for instance, using Reno as the point that you have been referring to, Reno should have the privilege of buying a product, of having its product transported from New York to Reno as cheap as that product could be transported from Chicago to Reno.

Mr. BARTINE. No, sir; we don't say that, and the bill doesn't say that.

Mr. HAMILTON. I was simply substituting New York for Pittsburgh.

Mr. BARTINE. It doesn't make any difference what place you substitute for it, the bill does not provide for anything of that kind. It simply provides that the charge from Chicago shall not be any higher.

Mr. HAMILTON. I am not referring to the bill.

Mr. BARTINE. I am addressing myself to the bill.

Mr. HAMILTON. It seemed to me that that would be a discrimination, returning to Pittsburgh, in favor of Pittsburgh as against Chicago, giving Pittsburgh the opportunity to get into your market as cheaply as Chicago.

Mr. BARTINE. Now, will you allow me to make that clear?

Mr. HAMILTON. And by the same reasoning, then, New York would be permitted to get into your market as cheaply as Chicago, wouldn't it?

Mr. BARTINE. I want you, Mr. Hamilton, to understand that this bill does not affirmatively provide for anything. It simply puts as a negation that they shall not charge more for the shorter than for the longer haul, and then comes the addition that "nothing herein contained shall be so construed as to authorize as high a charge for the shorter as for the longer haul, leaving it beyond that point entirely in the hands of the commission to determine what is reasonable and what is unreasonable. Then again, as I have said, when the Fourth Section case was before the Supreme Court of the United States it referred to these other sections, which provide that all rates shall be reasonable and that there shall be no discrimination. You must construe them all together.

Mr. HAMILTON. Then in the last analysis we must trust to the Interstate Commission to interpret what "reasonable" means.

Mr. BARTINE. Yes; but subject to the condition that they can not allow a higher charge for the shorter than for the longer haul. That is all.

Mr. SHAUGHNESSY. It seems to me it is perfectly clear. The third section of the act would take care of the criticism you raise.

Mr. HAMILTON. It is not a criticism; it is simply an inquiry.

Mr. SHAUGHNESSY. I should have said inquiry. Because that provides that there shall be no undue preference as between communities.

Mr. BARTINE. Now, I want to address myself for a moment to the status of the Panama Canal. In my opinion that is the most important point that has ever been brought to the attention of the Interstate Commerce Commission in these intermountain rate cases.

Schedule C, authorizing the railroads to lower their rates in order to meet competition at these coast points, was based upon the argument that the Panama Canal had been completed, and that moving through that waterway was a very largely increased tonnage. I have taken the position from the start that if the Interstate Commerce Commission could make any grant of exemption on the score of water competition, or should make it, the Panama Canal should be regarded as an exception to the rule. It is self-evident that if a railroad terminating at San Francisco is allowed to lower its rate or rates so as to meet the ships coming through the Canal, in order to have any effect at all it must stop some of those ships. Unless it gets some of that traffic it would not do the railroad any good. It would be simply throwing away so much revenue. The avowed purpose is to get a portion of the traffic that would otherwise go through the Canal. Now that canal is the property of the United States. It was built with the people's money. It is maintained and operated and controlled by the United States Government at a very great expense, and one feature of the Panama Canal act is that every vessel using that canal shall pay certain tolls. My information is that it is \$1.20 per

registered ton. A 10,000 ton ship pays \$12,000 for the privilege of passing through it. If it comes back, it pays \$12,000 more, loaded or light, \$24,000 altogether. Now, the Interstate Commerce Commission makes an order authorizing the railroad to put down its rates, and stops one of those ships as a result. The treasury of the United States immediately loses \$24,000. You have one branch of the Government pitting itself squarely against another.

Not only that, but the language of the act shows that the Panama Canal should be made an exception to any general rule on this point. Let me call your attention to section 5 of the Interstate Commerce law as amended August 24, 1912, and I would like to invite particular attention to this. I read from section 5, second paragraph:

From and after the 1st day of July, 1914, it shall be unlawful for any railroad company or other common carrier subject to the act to regulate commerce to own, lease, operate, control, or have any interest whatsoever by stock ownership or otherwise, either directly, indirectly through any holding company or by stockholder organizations, directors in common, or in any other manner, in any common carrier by water, operated through the Panama Canal or elsewhere, with which said railroad or other carrier aforesaid shall or may compete for traffic, or any vessel carrying freight or passengers upon said water routes or elsewhere, with which said railroad or other carrier aforesaid does or may compete for traffic. And in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.

I will skip the next paragraph. (Reading:)

If the Interstate Commerce Commission shall be of the opinion that any such existing classified service by water, other than through the Panama Canal, is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extensions will neither exclude, prevent, nor reduce competition on the routes by water under consideration, the Interstate Commerce Commission may by order extend the time during which such service by water may continue to be operated beyond July 1, 1914.

It can extend the time in the case of all carriers, except those operating through the Panama Canal. Now, what is the manifest purpose of those provisions? Isn't it to protect the traffic through that canal? Isn't it in the first place intended to keep the railroads from buying up a lot of ships and operating them through the canal, thus keeping out all competition with themselves? Isn't that the purpose of it? Now, then, what benefit would it be to have a provision of that kind and of that purpose upon the statute books, and then allow the Interstate Commerce Commission by a simple order permitting the railroads to reduce their rates at the coast points, keeping them up everywhere else, to produce exactly the result which Congress was attempting to guard against, and destroy traffic through that canal? Because when you once start you don't know where you are going to stop. No human being can tell just where to draw the line. If you put the rates down at the coast low enough to head off one ship, you may head off 2 or 10, or all of them.

Mr. SNOOK. Let me ask you a question there. I do not know as it has anything to do particularly with this subject, but this question occurred to me: If the war had not intervened, and the trade had continued up and down the coast and through the Panama Canal, and the railroads were not allowed to reduce their rates at coast terminals to meet the rates charged by the boats, in your opinion would there have been such an expansion of this ocean business as

would have eventually taken up all the coast business away from the railroads?

Mr. BARTINE. I have always taken the position that there would never be enough of the coast-to-coast traffic by water to very seriously injure the railroads. Of course if 10,000 tons of freight is brought in by ships, that same 10,000 tons is not going to be carried by rail. That is a self-evident proposition.

Mr. SNOOK. Would there be such an amount of that traffic carried by boat as to interfere with the operation of the roads?

Mr. BARTINE. Of course everybody admits that. An intensified water competition is going to take some traffic away from the railroads at the coast points, and why not? Don't we want both means?

Mr. SNOOK. Surely, we do. I understand that.

Mr. BARTINE. Now, here is the danger: Let them meet on even terms, and then let whichever one get the traffic that can. There is nothing to prevent the railroad from putting the Panama Canal entirely out of business if it can do it on the square, but it has no right—it should not be allowed the right to lower the rate at coast points, keeping them up at the interior, and forming a camel's hump of rates in order to recoup its losses at the coast.

Mr. SNOOK. What I wanted to get was whether, in your opinion, there would still be business enough left to the railroads at coast points?

Mr. BARTINE. Absolutely. As one witness here the other day said, the total tonnage handled by the Southern Pacific Co. was 29,000,000 tons, and there is only about 2,000,000 of it carried to the coast.

The CHAIRMAN. 1,000,000 one way and 1,000,000 the other through the canal?

Mr. BARTINE. Only a small fraction of the whole. I have already adverted to the fact that the local traffic in the State of California was so much greater than the interstate traffic, and the interstate traffic to the east would not be handled by boats.

Mr. SNOOK. That is, in your opinion, there would be plenty of business for the railroads and the boats?

Mr. BARTINE. Certainly. And it is my opinion, sir, that the railroads must look to the interior for the great bulk of their business from this time on. It is only natural that there should be considerable movement of traffic from coast to coast by ships, but in the very nature of things, as improvements in railroads go on, that must be relatively smaller. Of course the aggregate volume may increase, but relatively it must become less and less as the interior of the country builds up.

Mr. SNOOK. Of course the argument of the railroads is that they must have this business.

Mr. BARTINE. Yes; but the fallacy of that argument is that they should be permitted to make money at every point on their line, while my contention is that if they make enough in the aggregate they ought to be satisfied, and that they will do it.

Now, there is one other point that I want to refer to. There is a constant assumption that the railroads are in danger because of water competition. The building of railroads in this country began at a time when all of our traffic practically was carried by water, and

to-day we have something like 250,000 miles of railroad in operation in the United States. It is self-evident that the water carriers have not retarded the progress of railroads very much in this country, but the assumption is further indulged in that all of the improvements in transportation are going to be by water, and therefore the railroads are going to be confronted by extraordinary danger, perhaps be driven into the hands of receivers, and all that sort of talk, which we have had dinned into our ears year after year.

Mr. HAMILTON. Haven't the railroads been permitted to discriminate—to cooperate as to reduce water transportation, as cited by Gov. Sanders—of the river-carrying business.

Mr. BARTINE. There is no question about it. Mr. Shaughnessy read one decision by the Interstate Commerce Commission in which they recognized potential competition to a certain line when there was no actual competition there, but the river is there and the boats might come back; therefore they would allow the railroads to make preferential rates in order to keep them from coming back.

Mr. HAMILTON. It seems to me that both methods of transportation ought to be maintained for the good of the whole people.

Mr. BARTINE. Of course we all say that.

Mr. HAMILTON. But the scales of justice being as fairly adjusted as possible.

Mr. BARTINE. Now, if I might continue with my statement—I have only a few minutes longer. I was speaking about the claim of the great improvements in navigation, in ships being made so much larger and better, but we hear nothing from them concerning the tremendous improvement in railroad facilities. It has been shown that the capacity of a railroad, a given railroad, now as compared with what it was 20 years ago is practically doubled. We all know that the engines are double and sometimes treble the strength that they were 20 or 25 years ago. The cars are very much larger, and I have been informed—I don't know whether it is true or not—that they have in contemplation at this time the construction of cars that will carry anywhere from 200 to 300 tons. There is practically no limit to the capacity of a railroad. They talk about a railroad being operated to 100 per cent of efficiency, but that is misleading; 100 per cent efficiency can only apply at a particular time, because there is nothing to prevent it from increasing its efficiency.

I want to go just a step farther on this matter of the competition of ships through the canal with the rail carriers. You gentlemen. I take it, all understand that the ships operating from coast to coast have nothing but their through traffic to go on. They load at New York, and they unload at San Francisco or some other Pacific coast point. A railroad picks up business at every station along its way—that is, practically so. It has all of its local traffic everywhere, longer hauls and shorter hauls, and the local traffic is always charged higher rates than the through traffic. Now, when the Interstate Commerce Commission allows the railroad to lower its rate at the coast point in order to head off the ship, the railroad and the ship do not meet on even terms, because that traffic is all that the ship has to go on, and the railroad may go right down to the out-of-pocket cost and recoup its losses on other portions of its line. You see it isn't a fair proposition at all. It isn't a fair proposition, no matter what viewpoint you approach it from. It isn't fair to the Treasury of the

United States, because it keeps out the tolls. It isn't fair to the ships that have just the same right to live and to business that the rail carriers have, and it isn't fair to the intermediate interior country, which is subjected to a grinding and biting differential which amounts to a grave discrimination that very much retards the progress of that section of the country. Now, the gentleman who sat over there—I don't know what his name was—asked Mr. Shaughnessy about the removal of all differentials, and he referred to what had been done by the Interstate Commerce Commission. Mr. Shaughnessy had referred to the circumstance that when the Reno case began, the charge—the freight charge—on structural iron and steel at Reno was 78 per cent higher than it was at San Francisco. Different orders had been made reducing it, but finally before the last order was made removing all of this differential it had been brought down to 48 per cent. Then the gentleman said, "With 48 per cent differential against you, can the merchant in California receive structural iron from the East and send it back to Reno and undersell the Reno merchant?" Mr. Shaughnessy very properly answered, "No; he can not." The gentleman then said, "That is all I want to know."

If that is all a member of this committee wants to know, his wants are certainly easily satisfied. I will venture to say that if that gentleman were living in Reno and wanted to engage in the iron and steel business and wanted to go outside of Reno and sell some of his goods, as the Sacramento merchant does, and finds that when he gets 20 or 25 miles away from Reno he is headed off by the Californian he wouldn't like that condition a little bit. He would want to know something more about it, and I am very sure he would immediately make application to the Interstate Commerce Commission for something in the way of relief.

There was a young man here from Galveston—a very bright young boy. No doubt he understands the routine of his business all right, but when I want to know anything about the philosophy of a question like this I am not going to schoolboys for it. He said, among other things, that if the ships can not compete through the canal they ought to go out of business. So they ought, if they can not compete on fair and even terms, to be sure. If nothing is done artificially to injure the ships, and they can not maintain themselves they necessarily will go out of business. There is no "ought to" about it; they will. But that is not the point. The question is, Should the ships be forced out of business by giving the railroads an advantage over them in the traffic? Then this same young man showed how little he knew about these conditions by adverting to the fact that the fourth section contains a provision to the effect that if the rates are permitted to be lowered for the purpose of competing with water competition they can not be raised again unless for some reason other than the disappearance of the water competition, which he said was a full and complete protection.

Let us see how that works out. It sounds nice. What did the Interstate Commerce Commission do in its last order, which canceled the Schedule C order and required the railroads to adjust their rates in conformity with the strict rule of the law? The railroads immediately filed their schedules raising the rates at the coast points, in

almost every instance to the high levels of the intermountain rates. And the Interstate Commerce Commission allowed them to do it, and that is the way the thing stands to-day. Instead of lowering the humpback rates of the interior to a level with the coast rates, the coast rates have been brought up to a level with the hump; yet this young man is innocent enough to say that that provision in the statute is adequate protection to the people.

Now, gentlemen, if I had started out to talk five hours I would have adjusted myself to that condition, but I knew that I was not going to, and therefore I have been hurrying along and skimming, and, as usual, when one does that he sometimes limits himself a little too much. I remember on one occasion I had 40 minutes assigned to me for argument before the Interstate Commerce Commission, and I limited myself still more and got along to 36 minutes and had 4 minutes left and did not know just what to do with it. But I have only got about 5 minutes more and I hardly know what particular phase I could take up that I have not adequately covered from own viewpoint. If any member of the committee wishes to ask me any questions I will be glad to answer them as best I can.

The CHAIRMAN. Does any member of the committee wish to ask any questions? I have heard the Judge for five hours before and was very much interested and very much profited by it, and I do not think of anything now in addition to what I have heard before and what I have heard to-day.

Mr. BARTINE. Of course there is vastly more that could be said if I had the time to say it, but as the time is so nearly expired I will briefly submit the following in conclusion:

First, there is no question of the constitutionality of the law contemplated by this bill. That is settled by the Supreme Court of the United States in the fourth section cases. (234, U. S.)

Second, just such a law has been upon the statute books of Nevada for nine years, with no violations and no complaints.

Third, such a law can not possibly interfere with the war purposes of the Government. It does not mean reduced revenue to the railroads. In the intermountain cases the adjustment to the rigid rule increased those revenues some millions annually, through the raising of the lower rates.

Lastly, the discrimination is wrong and ought to be removed, no matter who owns, controls, or operates the railroads.

Now, gentlemen, I thank you very much for your courteous attention. I desire to insert, as a part of my remarks, the statement I made before the Joint Subcommittee on Interstate Commerce at the hearing held in San Francisco November 8 and 9, 1917; also my statement before the subcommittee of the Senate Committee on Interstate Commerce March 20 and 21, 1918.

The CHAIRMAN. Without objection, you have that permission. (Note.—The statements referred to are herewith printed as an appendix to the statement of Mr. Bartine.)

The CHAIRMAN. We are very much obliged to you, Judge. We will adjourn until 10.30 Monday morning.

(Whereupon, at 4.50 o'clock p. m., the committee adjourned.)

**STATEMENT OF H. F. BARTINE BEFORE THE JOINT SUBCOMMITTEE
ON INTERSTATE AND FOREIGN COMMERCE AT SAN FRANCISCO,
CAL., NOVEMBER 8 AND 9, 1917.**

Mr. BARTINE. Gentlemen of the committee, I am chairman of the Nevada Railroad Commission, and my residence is Carson, Nev. I am under obligation to the committee for allowing me continuances in the matter of time before making my statement, because I am not in my usual robust physical condition. A week ago last Monday I suffered a heavy fall, which jarred and bruised and shook me up badly, confining me to my room several days. My condition to-day is not bad, but unfortunately just at the time when I should have been preparing something in concise, compact, and concrete form to lay before the committee I was unable to do so. Then I received a sudden call to come to San Francisco, expecting to be placed upon the stand Monday, but it has been postponed from time to time, and all the preparation that I have been able to make is in the form of a few rough notes, part of which have been based on points that have been developed during the hearing, and to some extent upon questions which have been propounded by members of the committee to the various gentlemen who have appeared before it.

I am not vain enough to image that I shall be able, under the circumstances to make quite so lucid a statement as Mr. Mann did; in fact, it is more than likely that it will be considerably broken and disjointed, but I do sincerely hope that by the time I have finished the committee will be impressed that I am at least as logical and consistent as my brilliant friend, Mann, and I also indulge the faint hope that by the time I have concluded you will all be prepared to admit that I have given you more solid and substantial information than Mr. Mann did.

And you will pardon me, now, if I say, in appearing before you to-day, I do not represent any particular interest. I simply represent the entire State of Nevada officially, including all of its people of every kind and character, and every interest that is doing business within the confines of that State.

In the part which I have taken in these intermountain cases and other cases, wherein it has been necessary for me to engage in legal combat with the railroads, I have done so in no spirit of hostility, and I believe that the railroad attorneys who have met me before the Interstate Commerce Commission and in the courts will concede that although I have tried to fight them hard, I have always fought them fairly. I have never carried any concealed weapons, poisoned daggers, or marked cards up my sleeve to hand out to them at a particular time. I have even gone so far, before the Interstate Commerce Commission, as to come to the relief and defense of the leading railroad attorney, who was engaged in discussion there before the commission, when he was being pressed into a corner by one of the commissioners—and that commissioner the one who probably was the most friendly to my view of any upon the bench. I saw that the commissioner was mistaken with regard to certain facts, and the attorney, who, like myself, was not a rate expert, was not prepared to meet the point that the commissioner was passing. The situation became painful. In the end I arose and explained the matter. It happened to be one of those few things that I know something about. I set the commissioner

right, eased up the situation, and oil was poured upon the troubled water. Thenceforth all was serene. In another case when my young and brilliant friend, Mr. Wood, was upon the other side, in colloquy with him—I think he will remember it—I stated that my position in antagonism to the railways in these intermountain cases was not due to any hostility or based upon any desire to cut and slash into the revenues of the carriers; that I was not claiming that the Southern Pacific was earning too much money upon the whole, but that I felt and believed that it was getting too large a proportion of it out of the State of Nevada.

So much by way of explanation, and if my logic—if I may dignify what I say by that name—seems at times a little severe and cutting. I want it understood that I am discussing this matter just exactly the same as I would discuss a question in court, without the slightest personal ill feeling, but, on the contrary, with the kindest feeling toward every utility to which I shall refer.

Now for Mr. Mann's statement. That gentleman has represented the traffic bureau of the Chamber of Commerce of San Francisco at just about every hearing that I have attended before the Interstate Commerce Commission. His statement yesterday that the coast cities do not claim that by reason of the deep water at their ports, they had a legal right to lower rates than were accorded at intermountain points where no such water existed—well. I have been connected with these cases for more than nine years, and I say to you gentlemen that this is the first time that I have heard any representative of the coast cities make that frank and candid admission. I do not say that they have claimed affirmatively that they had that right, but I do say that all their actions have indicated that they thought they had. Mr. Mann has appeared in all these cases regularly as attorney for the San Francisco Chamber of Commerce. Why was he there if they had no legal right? Is there any man so ignorant as not to know that every decision of the Interstate Commerce Commission must be kept between legal lines? It is well established that the commission has no right in fixing rates to consider the commercial interests of any city. That was settled in the Willamette Valley case. Yet these attorneys have been ever present and claiming time for discussion, and it was noticeable every time all the way through, in dividing up in the hearing room, they always took their places among the representatives of the railroads.

Mr. Mann concedes that it is the place of the railroads in the first instance to defend these cases and to defend their rates. That is absolutely true, but Mr. Mann and Mr. Gregson and Mr. Bradley and Mr. everybody else who has represented a coast city have never hesitated to lend a kindly and helping hand to the railroads, and you could not have failed to note yesterday from Mr. Mann's statement that no matter what his verbal meanderings may have been on every proposition put up to him affecting his rates, he always landed on the proposition that would be most favorable to the city of San Francisco. That was notably true when Senator Cummins asked him about raising the rates of the water carriers. That would not do at all. The thing had to be equalized in his mind by lowering the rates of the railroad carriers because that was clearly and manifestly to the interest of the people whom he represented.

Mr. Mann traveled a long way afield to make a labored defense of the Interstate Commerce Commission. Upon that point I have only to say that the Interstate Commerce Commission, like every other official body in the United States, is fairly open to just and proper criticism. I do not know of any official body in the United States that has not been criticized. I have even heard the House of Representatives criticized; have heard the United States Senate criticized; and I fancy there is no man in the United States of America to-day who has undergone more criticism than Woodrow Wilson. Any criticism that I may level at the Interstate Commerce Commission is not intended as a reflection upon the character or integrity of purpose of any member of that body, but, like all the rest of us, they are only human beings. They are not infallible, and, as I said before, they are not above criticism. My criticism will be of their acts and not of the individuals.

Mr. Mann told us what a high regard and kindly feeling he and his people have for Reno. He told us that Reno had been one of their best customers, and judging from the way he and those for whom he speaks have acted during the last decade I very shrewdly suspect that they are in favor of keeping Reno one of their best customers instead of allowing that city to take her place as a distributing center side by side with San Francisco, although, necessarily, on a smaller scale. He expressed confidence that San Francisco would be able to grow and thrive even without the enjoyment of the distributing trade in the intermountain country. I am prepared to concede that this little village by the sea has some prospects ahead of it wholly irrespective of distributing goods in the intermountain cities, although I may admit that San Francisco is just a little bit handicapped in being located so far away from Reno.

The VICE CHAIRMAN. It seems to me that Reno is farther from San Francisco than San Francisco is from Reno, according to your idea. [Laughter.]

Mr. BARTINE. We have been very seriously handicapped in being so far from San Francisco, too, under the conditions which exist. Mr. Mann labored at very considerable length over the subject of water competition, and it seemed to him to be necessary to impress upon this committee that there was water competition.

Now, if anyone representing any portion of the intermountain country has ever denied that there is water competition I never heard it. I certainly have not. On a number of occasions I have clearly and distinctly admitted the fact that there was water competition. I remember on one occasion I did it and my brilliant and bright little friend Durbrow sprang to his feet like a rubber ball and said, "There, Judge Bartine admits there is water competition." Who in the world will deny that where there is the ocean there is water competition? However, it depends on how much competition there is. A single scow passing through the canal from coast to coast constitutes competition, but how much effect would it have? That is the point. We have always admitted that the water competition exists, but we have insisted that its force and effect have been greatly exaggerated. We have also claimed that notwithstanding water competition and the coast terminals the business at these points was profitable per se.

Let me go into that just a little. The water-competition theory found its strongest indorsement and became intrenched in the policy of the Interstate Commerce Commission as a result of the first Spokane hearing, which was held by Judge Prouty, and Mr. Mann quoted from Judge Prouty in language which implied that Prouty thought that there was not only water competition, but that it was controlling. I have always thought that Judge Prouty misspoke when he used the word "controlling." I think he simply meant to express the idea that it had an effect, because water competition has not been controlling in the sense in which the word "controlling" is generally used. At that time it was shown that the total amount of freight reaching the Washington coast line, the Puget Sound cities, was only about 14,000 tons, against several hundred thousand tons brought by rail, and weighing the one in the balance against the other it seems to me a self-evident proposition that 14,000 tons of freight carried by water could not control in the broad sense the rate charged by the railroads on several hundred thousand tons. At that hearing Mr. Jackson, president of the Hawaiian Steamship Co., gave testimony on the side of the railroads. He gave it as his opinion that during the following year, 1907, the tonnage of his ships would amount to 250,000.

In 1908 the Reno case was begun. Acting as the attorney for the commission, it occurred to me that if a showing could be made that the estimate of the water tonnage was too large it would be a very important point gained. So we secured testimony from a thoroughly reliable source showing just what the tonnage was during the year 1907, the year for which Mr. Jackson estimated 250,000 tons. What do you think we found? We found that the total tonnage reaching the Pacific coast from the eastern terminals was about 77,000 tons—less than one-third of the amount of Mr. Jackson's estimate—and it was some three or four years before the tonnage reaching the coast equaled his estimate for 1907.

Now, as it seems to be in connection, let me refer to a matter brought out by Mr. Esch in regard to the Tehuantepec Railroad. He suggested that in 1909, when Judge Prouty's opinion was written, the Tehuantepec Railroad was not in operation. Upon that point I can not speak with absolute assurance, but I am of the opinion that it was in operation in 1909, because I remember some years later when the fourth-section applications were under consideration before the Interstate Commerce Commission, Mr. Jackson was again upon the stand. He was then anticipating the opening of the Panama Canal. He stated that the total tonnage of his ships was 350,000, but with the opening of the Panama Canal the tonnage carried by his ships would be doubled. In order to show how uncertain such estimates are, I directed his attention to the fact that in 1906 he had predicted 250,000 tons for the following year, and his answer was that his prediction did not make good because of trouble on the Tehuantepec Railroad. I do not see how trouble could have occurred, if there was no railroad in operation.

Mr. Esch. I think the Pierce brothers, who owned it, were double-tracking it. I do not think they had finished all the harbor improvements at Vera Cruz.

The VICE CHAIRMAN. Perhaps the troubles to which President Jackson referred had put it out of operation.

Mr. BARTINE. Probably it did, temporarily, from time to time, but the railroad must have been in existence. The railroad must have been there or he would not have spoken of it in that way.

I have reason to believe that Judge Prouty's views on water competition underwent a very considerable change before he left the bench of the Interstate Commerce Commission, and I know you will pardon me if I refer to a circumstance which may seem to indicate something of egotism, for it was one in which I participated. During the progress of the first intermountain cases—Reno, Spokane, Salt Lake City, and Phoenix—I took part in the proceedings at Salt Lake City. The hearing was held by Judge Prouty and Mr. Clark, of Iowa, but in the latter part of the hearing Judge Prouty left. After Prouty left, the hearing went on before Mr. Clark alone, and by the request of the people of Salt Lake City, who had the matter in charge, I conducted the examination of the railroad witnesses. I then went around to Spokane, Seattle, Portland, and San Francisco, and back to Reno. At Reno I met Judge Prouty. Senator Newlands was present at the time, but I do not know whether he recalls the instance. Prouty greeted me and said he had been reading the testimony taken at Salt Lake City, and particularly the cross-examination of certain witnesses conducted by myself. He said he had been very much interested and had come all the way back to Reno to listen to my argument. I told him I hoped that he would not be disappointed. I went into the argument and took the whole morning.

At noon when it closed I walked down the street to the hotel accompanied by Secretary Walker, and overtook Judge Prouty, accompanied by the stenographer of the Interstate Commerce Commission. He greeted me courteously and said he had been much interested in my argument, and added, "I am still not convinced there is not something in the water competition; neither am I convinced that the terminal rates have not been profitable despite water competition." That was a great deal milder than anything he had said previously about water competition. But it is hard for a man to break away from any theory to which he has committed himself, and that is one of the difficulties with which we have had to contend in the intermountain cases.

The railroad attorneys have assumed that if they could only show that there was some water competition that justified them in maintaining the differentials and discrimination of which we complain, regardless of whether it was much or little. If the tonnage rose, of course they seized upon that instantly as a strong argument in their favor. If it fell, that did not make any difference, and they fell back on the theory of potential competition. I said in the first argument in the Reno case that you can not take potential competition as a definite element to be considered in rate making, because where you have simply potential competition—that is to say, you have the ocean—you can not tell when active competition will begin, and still less can you tell how much that competition will amount to. You are dealing with an uncertain quantity, and if the ocean is to be considered a potential element controlling rates, it is safe for us to say we will never get any relief, because the ocean will certainly be where it now is as long as any of us will live.

Now, while I am on the subject of water competition, I will try, as best I can, to complete it and say all that I desire to say upon it. I have already stated that it took several years for the water-borne tonnage to reach the figures given by Mr. Jackson at Spokane. I think for the years of 1911, 1912, and 1913 the average was about 235,000 tons. It is claimed, as you gentlemen know, that the rates at the terminals are rates that are compelled by the force of water competition.

At the first Reno hearing we had upon the witness stand the general freight agent of the Southern Pacific Co., Mr. Luce. I asked him the question point-blank, whether in making their rates they took the water carriers into conference and reached an agreement. He said they did not; they entirely ignored the water carriers. He stated they made rates to suit themselves and then let the water carriers do whatever they pleased. He stated, further, that the average rates by rail were 30 to 40 per cent higher than the rates by water, as an average, and yet that schedule of higher rates up to that time, the railroads had succeeded in getting 93 per cent of the business and holding it.

A marked increase of water-borne tonnage took place with the completion of the Panama Canal.

In Franklin K. Lane's decision in the fourth-section case, the Reno case that was a part of the fourth-section applications, made so by the Interstate Commerce Commission itself, he anticipated that increased tonnage through the canal and endeavored to provide for it. He prescribed a schedule of relative rates which, in his judgment, would meet the situation directly before the commission and immediately in prospect.

In the evidence at Chicago, when the railroads made their application for permission to lower their rates on the schedule C articles, of which you have heard, it was shown that for the month of September—the first full month after the completion of the canal—the tonnage had increased to something more than 70,000 tons—I think it was 77,000 tons, or something like that—and it was estimated that if that ratio of increase for the year was maintained the total would be 1,000,000 tons. There was only one month's tonnage before the examiner—the month of September. It so happened that this tonnage was maintained, and for that year there was about 1,000,000 tons of freight carried westbound through the canal from the Atlantic coast to the Pacific coast. Then came the slides and the European war and the traffic completely ceased.

Then Spokane and Nevada jointly appealed to the Interstate Commerce Commission to reopen the fourth-section cases and to order the railroads to adjust their schedules in strict conformity with the long-and-short-haul clause, inasmuch as the railroads had repeatedly declared that there was absolutely no justification for the differentials except water competition. They had admitted that to me on cross-examination many times and stated frequently that there was no other reason. We thought when competition of that kind had disappeared their argument failed and there was no reason why they should not conform strictly to the statute. And I want to suggest in that connection that the railroads themselves furnished no testimony whatever at that hearing, and I am making this suggestion

to show in what close accord these coast cities were with the railroads. Every witness and business man who went on the stand sang a song that he had unexpired business contracts and that there should not be a change of the existing conditions. At the same time they were not averse to having changes made favorable to them on the basis of one month's showing through the canal. It seems that everything is temporary that appears to favor the railroads, and everything is permanent that appears to disadvantage the railroads. That is my experience in my own commission at home with the railroads. The upshot was that the Interstate Commerce Commission did make its order canceling the schedule C order and requiring the railroads to adjust their schedules in conformity with the long-and-short-haul clause.

At the arguments at that time, to meet the contention that the railroads should get into line with the law and to remove the discriminations would make a serious cut into their revenues, I suggested to the commission that there were three ways in which that readjustment could be brought about—they could lower rates at the intermountain points to a level with the coast rates, they could raise the coast rates to the level of the intermountain points, or lower the intermountain some and raise the coast rates some, thus bringing them together at an intermediate level. It seems to me that the latter was the course pursued. How that will work out in the revenue sense I do not know, because I do not know exactly how the schedules stand, but it is quite obvious they could not lose very much in an adjustment of that kind because their heaviest tonnage is at the coast, as I understand it.

I am not quite through with water competition. There are several reasons, in my mind, for believing that water competition is not the real basis for this system of rate making. In the first place, the evidence shows conclusively, and it is not disputed, that there are some 160, 170, or 180 of what we call inland terminals in the State of California that have no more water competition than has Reno. They were near the coast terminals, it is true, and if a back-haul charge were to be applied, of course that would be less because the distance is less. They were not entitled to terminal rates, but they had them, and it is manifest that there must have been something more than water competition that prompted the railroads to grant those rates to those inland terminals. Another reason is that the evidence in the Reno and Salt Lake City cases showed that about one-half of the total westbound tonnage carried over the line of the Central Pacific Railroad went right through to the coast terminals. Now, if it was true that water competition was forcing down the terminal rates to a point that was not remunerative, it is incomprehensible to me that the railroads would carry one-half of their tonnage at less than remunerative rates. What I mean by "remunerative" is fully and fairly remunerative. Their claim was that the rates at the coast terminals would pay something above the transportation charges, but not enough to amount to a full or fair compensation for the entire service, and upon that point I am sure you will pardon me if I restate the substance of a colloquy that took place between the general freight agent of the Southern Pacific Co. and myself at Salt Lake City. I do it for the purpose of showing the loose and indefinite character of the testimony upon which the Interstate Commerce

Commission has granted these concessions to the railroads and refused to Reno, Spokane, and Salt Lake City the relief which they demanded.

Mr. Luce had made the statement that I made about the rates to the coast terminals paying something above the cost of transportation. He had to make that statement in order to make the rates lawful under the Supreme Court decisions. I asked Mr. Luce, "What do those rates lack of being fully and fairly remunerative?" He said he did not know. I said, "If you do not know how much they lack, how do you know they lack anything?" He answered, "I know it from my general understanding and familiarity with the business." Now, I understand that every member of this committee is a lawyer, and I will ask you as lawyers, How far do you think you could get in a court of law on testimony like that? Later on I said, "Mr. Luce, you say you think these rates pay something more than the cost of transportation. Do you know how much?" He answered, "No." I then asked, "How do you know they pay anything above the cost of transportation?" And he submitted the same stereotyped answer—from his general knowledge and understanding of the business. Again in the course of that same colloquy, and having reference to the excessive charge made at Reno, and having in mind his own statement that the terminal rates were not profitable, being compelled by water competition, I said, "Mr. Luce, suppose a carload of freight from a point in eastern territory is carried through to Sacramento, delivered to a Sacramento merchant, and unloaded there; is that business remunerative to your company?" "No, sir," he answered. I said, "Well, suppose that, in response to a call from Reno, that freight is reloaded upon the car and sent back to Reno and charged for at the local rate, \$1.29, making the charge \$4.29 at Reno on first-class goods," which it was at the commencement of the case, "would that be remunerative?"

He hesitated. He had to, because those two kinds of rates represented pretty nearly all the business of the road, and if the through rate plus the local distributing rate is not remunerative we are at a loss to find out where the railroad is making any profit. He finally admitted that it was. I then said, "Suppose instead of hauling that carload of freight all the way from Sacramento you drop it at Reno. You get away from that heavy haul to Sacramento. Don't you think you are getting too much from the man at Reno?" He answered, "No." I said, "Why not?" His answer was that the Supreme Court had said his road did not have to make the haul. I said, "I am talking about this as a business proposition; there you have saved a haul. Counting a mile on the mountain as equal to 3 miles on the level, you have saved several hundred miles of haul, and you charge the same as if you made that haul. Have you not saved something?" I could not get anything further out of him. I am not saying this in disparagement of Mr. Luce, but because it is typical of the testimony we have had to meet in all these cases.

Now, there is a feature of this question of water competition that I would like to bring to the attention of this committee at this time. I have made the point in argument before the Interstate Commerce Commission, but it does not seem to have weighed very heavily with that body, and perhaps they are right and perhaps I am wrong. I have contended, and I thoroughly believe, that the Interstate Com-

merce Commission has no right to make an order authorizing the railroads to lower their rates at the coast terminals for the purpose of heading off and appropriating to themselves a portion of the traffic that would otherwise pass through the Panama Canal. The Panama Canal was built with the people's money. It is owned, controlled, and operated by the United States Government. As one feature of the Panama Canal law we have the provision requiring every ship that passes through that canal to pay a toll of \$1.20 per registered ton. A 10,000-ton ship pays \$12,000 in tolls to the Treasury, and if it comes back, as it has to, it pays \$12,000 more, making \$24,000 for the round trip.

It is impossible for the railroads to get that business without preventing some of those ships from passing through the canal, thus defeating in part Congress's purpose in building the canal. Every time a ship is stopped from going through the canal the Treasury of the United States loses \$24,000. That is the department of the Government whose duty it is to raise revenue for the support of the other departments of the Government, including the Interstate Commerce Commission. To make clear the principle, suppose that canal, instead of a world canal, were strictly American and were confined to strictly American traffic from coast to coast, do you not see that the policy that has been pursued might easily put an absolute end to that canal as a revenue producer, and thus that aim of the Government be defeated? The purpose of Congress in enacting that law on that line would be defeated. Another purpose of constructing the canal was to expedite travel between the two coasts, and that purpose would be defeated by the course to which I have referred. Now, evidently in answer to that contention, in the opinion which was rendered by the commission, the statement was made that the canal was only one agency while the railroads were another, and they had to consider all. In this the Interstate Commerce Commission overlooked the broad distinction between a governmental agency and a private agency. Suppose we were dealing with taxation and the canal instead of being Government owned was strictly privately owned. A Government-owned railroad is not subject to taxation. Suppose when the Western Pacific got into trouble the Government had taken the road over; do you think that it would have been sound policy for the Government of the United States to allow the Interstate Commerce Commission to make an order fixing rates in such manner as to put the Western Pacific out of business, which might easily be brought to pass if this policy is pursued?

I suggest further that the interstate commerce act is a law relating to commerce; the Panama Canal act is also an act relating to commerce, and it is a well-settled rule of statutory construction that laws in *pari materia* shall be construed together and in such manner as to give both the fullest effect.

I believe that water competition through the Panama Canal should be deemed an exception to the general rule mentioned in the amended fourth section.

THE VICE CHAIRMAN. If the conditions are fair and just under which private corporations are operating, would you have the Government disturb them because they were competitors in the same business?

MR. BARTINE. What is that?

The VICE CHAIRMAN. If the conditions and rates under which private corporations were operating are reasonable and just, would you have the Government, because it possesses the competing lines, to disregard water and those conditions?

Mr. BARTINE. I certainly would not, and I do not think, Mr. Adanison, there is anything in what I have said that would lead to that conclusion. I am dealing with a case where the railroads have come forward and asked for special privileges—

The VICE CHAIRMAN. Is it not the idea that if the Government owns one and private capital the other, that the Government, being the regulating sovereign, should treat one as fairly as the other?

Mr. BARTINE. I do not think you get the meat of what I am saying.

The VICE CHAIRMAN. I think I do. You do not want the Government to rob itself.

Mr. BARTINE. If by legitimate competition a privately owned railroad could put that Panama Canal out of business, I do not think there would be anything wrong about it, but I do not think the Government should help it to do it by any preferential rates at the terminals. The railroads and the canal do not meet on even terms. The canal does nothing but a through business. Vessels that go through the canal load at the Atlantic seaboard and unload at the Pacific. They do not take up traffic all along the line. The railroads pick up way traffic, and when they put down their rates at the coast terminals they fall back on the interior points with higher rates and recoup their losses, something that the water carriers can not do. So, an order of that kind works an injustice in various ways: First, it is unjust to the water carriers themselves, who have just as much right to do business as the rail carriers; secondly, it is unjust to them because the competition is not equal—it is not equal for the reason I have given; thirdly, it is unjust to the Treasury of the United States, by depriving it of money that Congress decided should go there; and, lastly, it is unjust to the intermountain country, because it widens and increases the differential and discrimination against which we have been complaining all these years. I ask you gentlemen to give these points consideration.

Mr. Mann claimed that traffic through the canal would be resumed immediately after the war. I do not know how Mr. Mann knows that. I do not think any human being can tell how soon after the close of the war traffic will be resumed through the canal on any extensive scale. The evidence shows that the ships that formerly used the canal have been diverted to other business—not to the European trade alone, but to the South American trade also, a line of trade we have been endeavoring to get for a great many years. Some of the Hawaiian steamship lines are now engaged in that trade. It is declared that the business through the canal is the least desirable that these ships can engage in, and it is a noteworthy fact that the Hawaiian steamship line was the only one that was able to sustain itself very long, and that was because the Hawaiian line had a complete monopoly of the Hawaiian sugar business. Different lines have started from time to time, but, as Franklin K. Lane said in one of his opinions, in the Reno case, the railroads never had any trouble in taking care of them.

It has been suggested here that the shipbuilding program may have a bearing, and it may, but we do not know what it will be. It is gen-

erally believed that the new shipbuilding program is verily largely intended to make good war losses. Up to the present time it is quite certain that Great Britain has lost a great deal more tonnage than she has been able to replace, and the main purpose of the United States in shipbuilding on a large scale is to make good the losses sustained by Great Britain and France and some of the other entente allies. We have no way of knowing how many of these ships we are constructing will be destroyed. The more ships we have exposed the more targets there are for the submarines to fire at, and the greater and heavier the losses will be. At the hearing in Washington, to which I have referred and upon the basis of which the Schedule C order was canceled, the shipowners testified that there would be no resumption of traffic on a large scale through that canal until the close of the war. No human being can tell when it will close. We can not tell now whether it is any nearer the end than then.

They went further and said that after the war was over the conditions would be so abnormal that it would be a considerable period of time before there would be any general return to traffic through the canal, and that the ships would never go back to that business as long as they could do better in other lines; that the coast-to-coast business was the most undesirable part of their ocean trade, due to the biting and keen competition of the railroads.

There is another point in this connection brought out by Senator Cummins in one of his questions. He did not express an opinion, but the question suggested that the thought was in his mind: Assuming that carriers should lose a considerable portion of their terminal business, might not the growth and development of the country serve as more than an offset and keep their business still, upon the whole, fairly remunerative. That point is well taken. The United States is growing by leaps and bounds, and I have said in argument that the addition of 1,000,000 people to the country lying west of the Rocky Mountains would bring to the railroads operating in that territory more business than there was any reasonable probability of its ever losing through water competition. The whole theory of the railroads in dealing with this question is that they must be permitted to make a profit at every point along their line. I do not know of any rule or any principle upon which a railroad can claim the right to make a profit everywhere, any more than anyone else can make a similar claim; certainly the railroads have no right to make a claim of that kind and realize such a profit, when it can only be done by discriminating against a portion of their patronage. I think you gentlemen will concede this. If a railroad company, on the whole, is realizing a good and substantial profit upon its business, that is all it can reasonably ask for, even if it does have to give up business at one particular point. That is one of the vicissitudes of business that stares us all in the face.

Senator Cummins propounded a question, I think, to Mr. Gardiner, bearing upon this point—because it is correlated—he asked how much the reduction of the intermountain rates to the coast level would cut into the revenue of the railroads. That question is very difficult to answer, because the subject is vast and complex and it is very hard to get the data. But I can give you some approximate figures which will be at least suggestive. As we figure it in our office by close approximation, the reductions thus far made in the Reno

case, in the State of Nevada, amount to about \$180,000 a year, assuming a small increase in business since the Reno case was brought. We have figured that the reductions which we have secured amount to about one-third of the entire excess charge of which we complain. If we are somewhere near correct, the total cut into the revenue of the Southern Pacific Co., in the State of Nevada, would be about from five to six hundred thousand dollars annually upon a total earning of something like thirty million upon the Central Pacific.

With reference to whether the terminal rates themselves are fairly remunerative, let me give you some figures as nearly as I can remember them offhand. It is hard to carry these things around in one's head for years, because while I have been active in these cases I have been doing a great many other things.

Prof. Thurtell was one of our commission and he was a past master in mathematics.

It occurred to me that the claim of the railroads that the terminal rates were unremunerative might be true, and that the rates were yielding a little less than they might reasonably expect to earn. Admitting that to be so, it seems to me that the saving in transportation charges would be so great, when the freight was dropped off at Reno, that a rate that would not be quite compensatory at San Francisco would be a highly compensatory rate at Reno. So I had Mr. Thurtell take the entire mass of westbound traffic on the Central Pacific, and assume that it was left off at Reno and charged for there at the terminal rate in effect. Now, the evidence we had in the office, filed by the railroads, shows that about \$216,000,000 has gone into the Central Pacific, which was about \$146,000 per mile. That is not considered a basis of valuation for rate making. The original cost is scarcely considered at all. Judge Brewer pointed out the reason for that in the Reagan case (154 U. S.). Prof. Thurtell went about it and he found, upon the basis of \$216,000,000 total valuation, or \$146,000 per mile, the terminal rates, laid off at Reno, would leave to the Southern Pacific Co. 7½ per cent upon the capital. He further found that, assuming the reproduction value to be \$100,000, the return would be 10.75 per cent. He still further found, upon a valuation of \$80,000 per mile, which is very much nearer the true reproduction cost, as shown by the testimony of Mr. Kruttschnitt, at Salt Lake City, the return would be 13.75 per cent. So we have assumed that the fair value of that road does not exceed \$80,000 per mile for rate-making purposes. If, upon that valuation, the return would be 13.75 per cent at Reno, it seems to me that it is impossible to avoid the conclusion that if the freight were carried on to San Francisco, the return would be at least reasonable, say 7 per cent, and that is a long way from being unremunerative. Upon a large investment like that, 7 per cent is a pretty fair return. In fact, Judge Prouty found 7 per cent was excessive in the Spokane case. I only say it is reasonable, and from that I drew the conclusion that the rates at the terminal points were reasonable in and of themselves.

A great many nice and interesting points were brought out by the queries asked by you gentlemen. I did not make notes at the time, but carried them, as well as I could, in my memory, and I will now make a few general suggestions.

The people of Nevada, I believe, are practically unanimous in believing that the only true and certain remedy is a long-and-short-

haul clause. I appreciate the force of certain questions propounded by Senator Cummins in which he suggests some peculiar condition which might exist in a particular case. Laws are made on general lines. If there be any case in which a long-and-short-haul clause, ironclad, would work an injustice to anyone or do an injustice to the railroads it has never come under my observation. We have just such a clause in our railroad commission law. It has been there for 10 years, and it has never harmed anybody, and there has never been a whisper of complaint. This morning, questioning the gentleman from Spokane, Senator Cummins suggested a case of freight hauled through to Seattle costing more than the freight which was left off at Spokane. In dealing with this matter it does not seem to me that we should indulge in mere abstractions. I can not imagine a possibility of freight from eastern defined territory being carried through Spokane and on to Seattle costing less at Seattle than at Spokane, because when it gets to Seattle it has borne all the expense necessary to bring it to Spokane and then something in addition to take it on to Seattle.

We must remember that the long-and-short-haul clause is peculiarly worded. I have only spoken of it as such in general terms, but the formula is this, that there shall be no higher charge for a shorter than a longer haul over the same line and in the same direction, the shorter being included in the longer. I can not imagine how a case could arise under that language where the cost for the longer would be less than for the shorter haul, because in making the longer the longer haul would have to incur all the expense incident to the shorter one and then some.

Much has been said about delays. I do not particularly censure the Interstate Commerce Commission for these delays, except as I think they got off on the wrong foot at the start. I think they made an error at the very beginning which was responsible for a great part of the delay. In the first place, we had four intermountain cases—Reno, Spokane, Phoenix, Ariz., and Salt Lake City. As I suggested, we have gotten considerable relief in all these cases, but not enough. In 1910 the long-and-short-haul clause was amended, and shortly thereafter 13 railroads engaged in interstate commerce moved for exemptions from the operation of that clause. I suppose that these 13 cases were brought separately by separate petitions, but the Interstate Commerce Commission grouped them all together and considered them as if they were one. Not only that, but the Reno case, and these others that I have mentioned, which had been made up with infinite labor and at great expense, were thrown into hodgepodge with the others, it being the idea of the Interstate Commerce Commission that the whole matter might be settled in one or two cases. I suggested to them that if they attempted to settle the whole situation by one or two general orders they would probably find, in the slang of the street, that they had bitten off more than they could chew, and I think they rather agree with me at the present time. This was what was done.

These petitions asked for such exemptions from the long-and-short-haul clause as would leave the rates which they then had in effect in effect for the future. In other words, that they should not be effected at all by the law. The Interstate Commerce Commission did not give them all that they asked for. It gave them a measure

of exemption. I may say, in passing, that in the beginning of the Reno case the closest calculations we could make showed that the average differential against Nevada was 73 per cent in favor of the coast cities, and this in the face of a very much shorter haul. The fourth-section orders provided that from the Missouri River territory into the intermountain territory the rates should be no higher than to the coast; that from Chicago territory they might be 7 per cent higher; from Pittsburgh, 15 per cent; and New York, 25 per cent, recognizing something more in the way of water competition as you get nearer to the Atlantic coast. The railroads were not satisfied with these orders and attacked them in the Commerce Court. They attacked them not upon the ground that the commission had not given them the full measure of their demands. They did not attempt to do that, because to whatever extent an order fell short of giving them all they had asked for, it had the form and effect of a negative order, and the Supreme Court has decided that negotiations can not be appealed to the courts, because if the court gave relief where the commission refused the court would be making rates. The contention of the railroads was that the commission had exceeded its jurisdiction in establishing a relation of rates instead of reasonable rates. However, the Commerce Court sustained the contention of the railroads. I think Mr. SIMS will remember that, because he was very instrumental in bringing about the abolishment of that court, and the Nevada commission, in its small way, tried to help.

The Commerce Court had reversed 23 out of 27 cases brought up to it from the Interstate Commerce Commission, and the Interstate Commerce Commission did not hesitate to indulge in a little mild criticism. But the point is this: The contention of the railroads in that case was only a technical ground for an appeal to the court. The case was then appealed by the Interstate Commerce Commission to the Supreme Court of the United States, and in this we have a most extraordinary spectacle presented. Here is where I think the Interstate Commerce Commission, viewed from a legal standpoint, is open to criticism. The order as they made it was absolutely the only thing which stood between these railroads and an ironclad long-and-short-haul clause. We found the railroads attacking that order and the Interstate Commerce Commission defending it. There, I think, the Interstate Commerce Commission made a mistake. It should have said to these railroad managers, "You say that this order is void, and the Commerce Court has sustained you in that contention. We will take your word; we will concede that it is void. We will cancel it. Now, put yourselves in line with the law." That is what they should have done. I think; but, instead, they went to the Supreme Court of the United States, and it was nearly two years before that body decided it. It was submitted once, and then came a vacancy due to the death of one of the justices on the bench. Mr. Justice Pitney was appointed, and the case was reopened so that he could hear the reargument. Finally, the decision was handed down by the Supreme Court of the United States sustaining the order of the commission.

In that opinion the Supreme Court declared—and it was not dictum, either—that an absolute long-and-short-haul clause was constitutional. There we lost three years. Of course we could not force matters through the courts any more quickly.

I make the point, and have made it before, that these fourth-section orders, applying as they did to 13 railroads and four separate and distinct cases—Spokane, Reno, Salt Lake, and Phoenix—could not fairly be considered as special within the meaning of the word “special” as used in the statute. If an order which practically covers and includes all the westbound traffic of the United States to the Pacific coast, which applies to 13 railroads, no two of them being situated alike, every one surrounded by its own special conditions—if such an order as that can fairly be termed “special,” I would like to have somebody who is better versed in the English language than I am to tell me what, in his judgment, would be a general case. It seems to me the commission has entirely wiped out all distinction between a special case and a general case and have made the word “special” of no force or effect in the statute. It is the same as if the word were not there. I suggested this at one of the hearings and one of the commissioners stated that the Supreme Court had sustained the order. True, but this point was not before the court. The Supreme Court decided the case on the issues as made. The Interstate Commerce Commission would not raise the point that it was too general, because by doing so they would have confessed error, and the railroads would not raise it because it was in their favor, and therefore it was not raised at all. Judge Archbald, of the Commerce Court, did touch it lightly, but it was purely dictum and outside of the record.

It is not to be understood that we do not trust the members of the Interstate Commerce Commission in their personal character. There is no feeling of that kind. I have not the least doubt in the world that they are all highly honorable men and men of exceptional ability, but there are none of us perfect; none infallible; and every man is controlled more or less by his environment. The stronger he is the less that control will be, but there are very few who are not subject to environment to some extent. The manner in which these cases have been dealt with by the commission indicates to my mind that it is not strong enough and not forceful enough to be intrusted with a power like that. I go further, than that and say I do not think there are nine men in the United States that should be invested with the power to make exceptions to the long-and-short haul clause of the amended section. I have given you some reasons for so thinking by pointing out the exceedingly thin and unsatisfactory character of testimony upon which the railroad cases have been made. Every member of this committee knows that the main purpose of the fourth section was to establish an absolute long-and-short-haul clause. It was adopted as a substitute for the Dixon amendment, which provided such a clause. The idea existed in the minds of a great many Congressmen that it might be held unconstitutional and that we would get nothing. Manifestly, the purpose of Congress was to get just as near as it could to an absolute long-and-short-haul clause, at the same time avoiding any possible constitutional objection. It was thought that there might be some exceptional cases in which an exemption could properly be allowed, but primarily Congress had in mind that those cases would be few and far between—sporadic, I might say—and not so general and sweeping that one or two orders would exempt practically the whole United States from the operation of the law.

Mr. Mann stated yesterday that some 10,000 applications had been filed with the commission for exemptions. They have not been passed upon. I think I know why they have not. The commission wanted to get a decision upon the law. That, of course, was for them to determine. I am not criticising the commission's course on this point. I am only speaking of the fact that all these claims for exemption have been filed as indicating the unwisdom of having a law that permits 10,000 claims for exemptions to be filed. Obviously, if all should be granted there would be universal departure from the long-and-short-haul clause in the United States, and it would be useless.

If an absolute long-and-short-haul clause were to work injury in any case, it seems to me it must be upon a small scale and the case would be unimportant for the reasons I have given, especially when it is guarded as this one is, the short haul being included within the long haul, running in the same direction.

Another thing, that long-and-short-haul clause was amended very largely upon the strength of the strong and earnest protest that had been constantly going up from the intermountain country against the violation of that principle by the railroads. Our complaint was always about the back-haul charge, and I was amused to hear Mr. Mann say there was no such thing as a back haul and there never had been. He was mistaken. When the custom started, 30 years ago, the freight was actually hauled through and back. The return was charged for as a local rate. That certainly constitutes a back-haul charge. Later, the people complained of the delay and the railroads, seeing that it was cheaper for them to drop it off than to haul it over the mountains, and bring it back, adopted the method of dropping off the freight at Nevada points, but charged just the same as if they had hauled it through and back.

Now, this is enough to make it clear why, representing my people, I favor a long-and-short-haul clause. As I told you at the start, I am speaking in a broken and disjointed way, and I want to call attention to another fact that was disclosed by the testimony in these cases, which bears out my contention that the terminal rates are remunerative per se. Among the principal products carried to the Pacific coast are structural iron and steel. They are carried through at 80 cents per 100 pounds. At Reno, 62 cents per 100 pounds was added. We paid that as a local, making \$1.42 in all. They—the railroads—always claimed that the 80-cent rate was not fairly remunerative. Nevertheless, when the Panama Canal got into full swing, they applied to the Interstate Commerce Commission for leave to lower that 80-cent rate to 55 cents. Here was a case where they claimed that the rate in existence was unremunerative, and yet they applied to the Interstate Commerce Commission to permit them to put in a lower rate, which would mean a lost revenue of practically \$200 a car of 40 tons, and in a trainload of 50 cars would involve a loss of \$10,000. Now, if a 55-cent rate is remunerative to the extent of covering more than the cost of transportation, is it not self-evident that an 80-cent rate—about 45 per cent higher—must be in the highest degree remunerative? It seems to me there is no avoiding that conclusion.

Now, gentlemen, I see you are looking at your watches. I was given to understand you were going to remain in session until 1

o'clock. As it is, I am leaving out some things which I had in mind to say, but I am sorry I am losing my audience.

(At this point Senator Cummins was obliged to leave.)

Mr. SIMS. What you say will appear in the record, and we can all read it.

Mr. BARTINE. I want to give you one more reason for my belief that water competition is not the true reason for this discrimination. It is found in the fact that the entire excess charge of which we complain is levied and absorbed by the final carrier alone. Now, if it is water competition which is forcing the rates of the terminals down to an unreasonably low figure, it is self-evident that every connecting carrier engaged in that haul must suffer from that depression of rates; still the entire back-haul charge, as I have designated it, is levied by the final carrier alone and absorbed by the final carrier alone.

In the Reno case, at the first hearing, I questioned Mr. Luce upon that point and asked how the rates were constructed, taking the first-class rate as a sample. I said, "How do you make up the \$3?" (which was the first-class rate). And he said, "We and our eastern connections get together and agree upon it." I said, "Then you divide that among yourselves?" He replied, "Yes." "How about the \$1.29 excess charge levied at Reno? What agreement have you with your cocarriers on that?" "None whatever. They have nothing to do with it." "Not a thing? You levy it yourself and you take the money unto yourself?" "Yes, sir. That is all there is to it."

You can see just what principle there is involved. It is exactly the same as if you, Mr. Sims, should be making a trip across the continent from New York to San Francisco. You get as far as Reno—you have a through ticket—but you conclude you would like to stop off at Reno and stay. The conductor tells you you can not get off unless you pay him the price of the trip from San Francisco back to Reno. That is the exact situation. In a case of that kind, what would these eastern connections have to do with it? Nothing. Take another illustration: Suppose that freight, as formerly, was being carried through to the coast and then brought back by the final carrier and charged for by the final carrier, what would the eastern carriers have to do with that? Nothing at all. The mere fact that they have cut out the carriage over the mountain, and it is not carried back, does not change the principle in the least. It is an arbitrary levied by the final carrier and for the final carrier's benefit alone, and yet in all these cases the Interstate Commerce Commission has persisted in speaking of this as merely a division between the carriers. If this is a division between the carriers, I am afraid my education in the English language has been sadly neglected.

Now, gentlemen, in order that you may get away speedily, I will hurry along, and I will refer briefly to just one more matter, and that is the question of vesting all control of the commerce of this country in the hands of the Interstate Commerce Commission. Our people are absolutely opposed to that, and I think it will be an exceedingly hard matter to get a majority of the American States to ever consent to surrender all control over local traffic, even though it may remotely and incidentally touch interstate commerce. There

is hardly any business on a large scale carried on in the country that has not some remote and incidental connection with business that is interstate.

The argument is one of convenience. If we are going to approach these matters from the standpoint of convenience, I might say that the most convenient government in the world is a despotism. To invest all power in the Federal Government is contrary and opposed to the organization of the American Republic. The country is vast in its extent—has an infinite variety of soil and production. We have the country divided into States, the States divided into congressional districts, and still further subdivided into legislative districts, all being intended to give to every locality full and fair representation. If we are called upon to give up control of our local traffic and hand it over to the National Government, it is an entering wedge for a similar demand concerning a great many other things. If I could be brought, under any circumstances, to favor it—and I do not know whether I might or might not, because I am as liable to change my mind as other people—perhaps there might be new developments that would have some influence with me, but as I feel now, I may say that if under any circumstances I could look with favor upon handing over this entire business to the National Government and letting the Interstate Commerce Commission take care of it, I could not possibly consent to it with the Interstate Commerce Commission organized as it is now, not saying a word against the individual members. Here we have this great country stretching from British America to the Rio Grande River, from the summit of the Rocky Mountains to the summit of the Sierra Nevada, more than double in area the two great central empires of Europe, standing in more pressing need of upbuilding than any other portion of the United States, absolutely without representation upon that body. There is only one man on the commission from west of the Rocky Mountains, and that is Mr. Aitchison, and he is from the coast region of Oregon, a region that has always been antagonistic to the intermountain region.

Mr. ESCH. There is Mr. Hall from Denver.

Mr. BARTINE. Denver is in a class by itself, and we have found the Denver people quite generally against us in these intermountain cases. The fixing of rates specifically to Denver is to our disadvantage. Denver is looking out for Denver. Mr. Hall is from Denver, and as far as any intimations will give a guide to a man's feelings, I will say to you—and I say this respectfully—that Mr. Hall's intimations from the bench have not indicated that he is in sympathy with the aspirations and desires of the intermountain country. He became so pointed on occasions that I was bold enough to rise and rebuke him. It is just one of those cases of a man being influenced by his environments. Perhaps I misjudged him in that case, because he afterwards joined in this order canceling the present exceptions.

I do not want to be understood as intimating, for a moment, that there is anything wrong with these gentlemen. With the exception of the two new members, I am acquainted with them all. When I am regulated, however, in the intermountain territory by the Interstate Commerce Commission, I want to know at least that we have

representation on the commission that knows a little about that region.

The VICE CHAIRMAN. There is nothing in the law to prevent the selection of such men.

Mr. BARTINE. That is so, but there is the danger of it. We are dealing with an uncertainty. The very fact that the Interstate Commerce Commission has wobbled around as it has, in dealing with these matters, shows how uncertain is our protection at the hands of that body.

Mr. SIMS. Would you have the law amended so as to require at least one member to be appointed from this intermountain territory?

Mr. BARTINE. I merely made the statement to meet the situation as it exists to-day. Even if there were a member from the intermountain country, I would not be in favor of the plan at this time. I simply urge it as an additional reason. I am not criticizing the President of the United States for not appointing a man from the intermountain territory. My understanding is that he believes any man that is big enough to hold a seat on that bench is big enough to do justice to the whole country. That is true, in a way. You can find enough able men in Massachusetts to administer the whole United States, but I do not believe the people of the country would stand for that. I know the people of Nevada would not.

The VICE CHAIRMAN. If you are ever going to have Federal control of everything, under a plan of regional commissions, in order to preserve local protection and local interests and at the same time the spirit of our representative institutions, ought the commissions not be elected by the people of the particular districts affected?

Mr. BARTINE. I think, if we were to get to that condition, then, that would be the proper way to do it. Then the voice of each particular section would be heard.

The VICE CHAIRMAN. And represented.

Mr. BARTINE. Yes, sir. As to a man being big enough to represent the whole country, that is not the question. There are big enough men in all parts of the country. I think I could pick out in Nevada nine men big enough for Interstate Commerce Commissioners.

The VICE CHAIRMAN. But if he happened to be wrong he might be too big a man.

Mr. BARTINE. Yes, sir; but an ironclad long-and-short-haul clause would be the thing. We would be much safer under a long-and-short-haul clause, even if the Federal Government had full control. In any view of the matter the long-and-short-haul clause, to my mind, is going to be of advantage. It will be of advantage to the great bulk of the people of the United States, and if it does any injury at all it will only be in very few sporadic and small cases.

The VICE CHAIRMAN. With reference to the organization of the Interstate Commerce Commission, or its reorganization, with a view to bringing the regulating power in closer touch with the communities affected, have you any views to express?

Mr. BARTINE. Why, Mr. Chairman, I recognize the fact, which has been brought out here, that the Interstate Commerce Commission is an overworked body of men. Perhaps they exaggerate the amount of work which devolves upon them, because they have a formidable

corps of assistants to do the drudgery; but still there is no doubt that they have a great deal of work even after the drudgery has been done by subordinates. It is no small task to take a case after it has been made up, analyze it, and arrive at a fair and just conclusion. It seems to me it would be well to relieve that commission as far as possible by the appointment of regional commissioners, but not to abolish the State commissions. The regional commissions would be in close touch with the local conditions. The regional commissioner would sit very much as a district judge of the Federal court does. He could hear cases and render decisions, subject to appeal or revision by the main body; and it seems to me it might serve to help the Interstate Commerce Commission a great deal.

You gentlemen remember that the circuit court of appeals was constituted for the purpose of relieving the Supreme Court of the United States. It might possibly be that the same principle could be applied to these regional commissions and allow their decisions to be final in cases of no great magnitude, the parties always, of course, having their appeal to the courts in proper cases. In that way, I think, the commission would be very greatly relieved, and I think that the various sections of the country would be able to make the commission, as a whole, better understand their wants and their needs than they can now. At the present time the commission acts almost entirely through subordinates in the taking of testimony. If we want a hearing in the city of Washington we have to travel way across the continent, and it is a very expensive trip. I have been before that commission when the fourth-section cases were on—when the total representation from the intermountain country did not consist of more than 15 or 20 people, several of them appearing in the capacity of State commissioners, like myself, and it is conservative to say that the railroads were represented by 25 or 30 highly paid attorneys and at least 100 of the leading traffic men of the United States. Why, the atmosphere was simply surcharged with railroad sentiment. We are all more or less subject to environment—

The CHAIRMAN. Take the region west of the Mississippi River, in case we could follow out the line of this suggestion regarding regional commissions. How many regional commissions would you suggest, and what would be the area of each?

Mr. BARTINE. I have not given it enough thought to figure that out. Of course, population alone would not be the only thing to consider. The wants and needs and general situation in the various sections should be taken into consideration.

The CHAIRMAN. Take this Pacific coast region. Would you have the region constitute not only the Pacific Coast States, but some of the Intermountain States, or would you have the intermountain region a region by itself?

Mr. BARTINE. My feeling would be to give the Pacific Coast States proper a regional commissioner. I would divide the intermountain territory into two regional districts, because it is larger in extent and stands in more pressing need of care and attention, and more study would have to be given to the transportation problems that arise there. It has always been the policy of this Government to pursue such course as will lead to the best upbuilding of the country. It is not a question of population. The transportation problems that will

arise in the intermountain country might not be so numerous as those on the Pacific coast, but they would, generally speaking, be of great magnitude, because of the great size of the country. It is one of magnificent distances, where the hauls are exceedingly long, and of course where the haul is very long the difference in freight charges is of enormous importance to those who have to pay the charges. There are cases of some lower-grade commodities which we consume and use in the intermountain country the freight charges upon which are very much greater than the initial cost of the commodity.

The CHAIRMAN. Suppose you should divide the intermountain territory into two regions, how would you segregate them?

Mr. BARTINE. That is only a rough conjecture. I would like to sit down with a pencil and paper and figure it out.

The CHAIRMAN. You have not given that subject reflection?

Mr. BARTINE. No, sir.

The VICE CHAIRMAN. I can not understand myself the practicality of making artificial divisions of territory in which elections could be held, and yet I believe that in order to carry out our idea of representative government that if we have these regional commissions we should elect the commissioners, but I do insist, for whatever it is worth here or elsewhere, that instead of changing the system we simply enlarge the present commission. We have already taken a great step in advance. We have already authorized them to subdivide into three or more divisions. I can see that they need more men, so that the commissioners can go themselves and examine cases instead of sending clerks and subordinates. Why not increase the commission by enlarging the commission to say 15 or 16 members and have them subdivide themselves and have it understood that they will have departments over the country and have it so arranged that the intermountain country can have two or three members, and then they can go around and hear the cases. The Supreme Court itself designates judges to go around over the country, and it seems to me to be so much easier and more satisfactory than revolutionizing the system and getting up rather anomalous plans, having regional commissions to be appointed by Washington to represent the local districts.

Mr. BARTINE. I am not wedded to the regional commission idea. I simply mentioned that because it has been mentioned to me, and it was one thought that occurred to me.

The VICE CHAIRMAN. Do you not think my idea is better—to use the present commission as a groundwork and extend that?

Mr. BARTINE. I think, on the whole, it would be better to enlarge the commission itself to a sufficient number of members to cover the entire territory and have every portion of the territory properly represented upon it and have 15 or whatever number may be necessary, so that each one would stand on an equal footing with another, whereas the regional commissioners would be in a sense inferior.

The VICE CHAIRMAN. And not only give them enough members but if the present salaries are not enough to demand the talent of the country, increase the salary. We need the best talent in the country for that commission.

Mr. BARTINE. You can not get into an argument with me on that subject.

The VICE CHAIRMAN. I do not see how the suggestion about appellate jurisdiction from the regional commissioners would be as good as the system we have at present. It looked so curious to me that it appeared to be almost a joke. I have been studying the long-and-short-haul clause a long time. If your idea of establishing a system should prevail, there would be no long-and-short-haul clause. As I understand these gentlemen, their idea is they would have transportation facilities if there had not been any railroads built east of Reno to the Atlantic coast, and Reno would have paid the ocean transportation plus the local east from San Francisco to Reno. By the construction and operation of a railroad from the Atlantic coast to Reno you lose nothing and you ought to be satisfied; is not that their idea?

Mr. BARTINE. That is their idea.

The VICE CHAIRMAN. And then, if you do not lose anything, you should not complain.

Mr. BARTINE. In other words, when the Central Pacific line reached San Francisco it found the clipper ships plying around the Horn supplying that port. The means of distribution were mule teams and ox teams. That was the condition that confronted the Central Pacific. It immediately proceeded to adjust the rates in such manner as to put the clipper ships out of business, and it was done, and for a number of years this so-called back-haul charge was not imposed, but the charge increased with distance as the freight came from the East. It increased with the increase in distance, although not strictly prorated. Afterwards came the other railroads across the continent, gridironing it from east to west and others gridironing it north and south, and others coming in all sorts of ways, so that the gridiron becomes a sort of spider web, and the railroads' theory is that in fixing these rates we are still controlled by the same conditions as when the clipper ships were doing the business.

The VICE CHAIRMAN. You can not complain that you are injured because the railroads give you the same rate as formerly.

Mr. BARTINE. We are not injured directly but are deprived of the benefits to which we are entitled.

The VICE CHAIRMAN. Their theory is that if you have a reasonable and just rate in and of itself, the relationship between your rates and the port rates is entirely immaterial, because you have reasonable and just rates and you lose nothing by their going down and taking water-compelled freight at a lower rate; that you lose nothing because the water carriers would carry it anyway. What is the fact about that? They say if they have to raise their rate and lose their traffic, it will result in their raising rates on your traffic. What is the practical result of that? Are your rates higher than they ought to be because they charge you for the revenue lost on the Pacific coast business?

Mr. BARTINE. They are not higher if the method they have adopted is correct.

The VICE CHAIRMAN. They say you lose nothing anyway; that if they did not come down to the coast and take that low-rate freight, they would have to charge you higher than they now do to make up the revenue. They say they do not charge you higher by reason of taking this cheap freight at the coast. What is the truth?

Mr. BARTINE. Let us deal with this not upon abstractions but upon the facts.

The VICE CHAIRMAN. Is their rate to Reno and other intermountain points higher than if they did not take the traffic?

Mr. BARTINE. Did you hear my figures in my opening statement?

The VICE CHAIRMAN. Yes; I heard some of them.

Mr. BARTINE. They are as clear as I can state them.

The VICE CHAIRMAN. I asked you whether or not it is your opinion your rates are no higher, by reason of giving the other ports the lower rates.

Mr. BARTINE. It is the natural disposition of the managers of the railroads, the same as all other business concerns, to realize as much profit as possible. Anyone who goes into business naturally expects to realize, if he can, a fair return upon the amount of his investment. Now, if a railroad finds it is confronted by competition at a particular point, and it lowers its rates at that point so much as not to yield a fair return there, it is the natural disposition of that company to try to make good in some other place.

The VICE CHAIRMAN. Do they not do it?

Mr. BARTINE. I think they do.

The VICE CHAIRMAN. That is all.

Mr. BARTINE. I have shown that the terminal rates applied at Reno would yield an ample return.

The VICE CHAIRMAN. Mr. Bartine, I think this is a good place to adjourn. The committee will stand adjourned until to-morrow, Friday, November 9, 1917, at 9.30 o'clock a. m.

FRIDAY, NOVEMBER 9, 1917.

The committee met at the Palace Hotel Friday, November 9, 1917, at 9.30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding, Hon. William C. Adamson vice chairman.

The CHAIRMAN. The committee will come to order.

Mr. THOM. Mr. Chairman and gentlemen of the committee, when the committee came West it was our understanding that the purpose of the visit to the West was to afford convenience to gentlemen who desired to testify and who were resident on this coast and in this vicinity and that it would not be appropriate for the carriers to undertake here to consume any of the time. I desire to give notice, however, and have it understood, that we desire to present, when the committee finds it convenient in Washington, the carriers' views on this important question which has been so largely dwelt on here, namely, the long-and-short-haul clause, as well as the general subject.

The VICE CHAIRMAN. It was understood and announced at the beginning of these hearings that Mr. Thom would be heard again in conclusion, if he desired.

STATEMENT OF MR. H. F. BARTINE—Resumed.

Mr. ESCH. In the course of your testimony yesterday you intimated that in the earlier stages of this long-and-short-haul controversy the coast cities justified the lower terminal rate on the ground of actual water competition and later they substituted the argument of a potential water competition.

Mr. BARTINE. Yes, sir.

Mr. ESCH. But, of course, at the present time, owing to the war and the need of shipping, there is no actual competition.

Mr. BARTINE. That is the fact.

Mr. ESCH. I do not know whether you expressed your own opinion as to what the situation will be when peace comes, as to whether there will be actual water competition and whether or not that will be large or not. What are your views on that phase of it?

Mr. BARTINE. That is a matter which rests largely in conjecture, Mr. Esch, and I do not know that my views would have any more weight than those of any other equally intelligent man. My views to some extent are based on testimony given by the steamship managers themselves at the hearing on the basis of which the schedule C order was canceled and the carriers were directed to remove all differentials, harmonizing their schedules with the long-and-short-haul clause. But the opinion was very freely expressed that there would be no resumption of the traffic through the canal until after the war was ended, and no one could give any suggestion as to when the war would be ended; then the opinion was expressed by the steamship people that the conditions after the war would be such for a number of years—two or three at least—that other lines of ocean traffic would be more profitable than business through the canal, and the opinion was also expressed that as the traffic was resumed it would be resumed gradually through the canal and that it would take a considerable period of time before it got again into full swing, as it was at the time it closed.

My own deliberate judgment is that the traffic through that canal will never reach proportions that will seriously interfere with the traffic of the railroads.

Mr. ESCH. That is largely the point of my inquiry—whether or not it will.

Mr. BARTINE. Yes, sir.

Mr. ESCH. In arriving at your conclusions did you take into consideration the new situation of the Government with respect to merchant marine as indicated by the creation of a shipping board, and by reason of the appropriation of one and three-quarter billions of dollars for the building up of the merchant marine?

Mr. BARTINE. Taking into consideration everything, and looking at this matter as a purely commercial proposition, traffic through that canal by water will not be extended beyond the point of reasonable remuneration for those who are engaged in it; and that brings me back to a point I did not touch upon, and that is that the rail tonnage is increasing far more rapidly, by reason of the upbuilding of the country, than any water tonnage can, because the water tonnage in the main must necessarily be confined to the products of a narrow field on the seaboards, and the tendency as the country develops is to move the great manufacturing and productive industries farther and farther inland, thus maintaining the rail haul and making water traffic less desirable.

Mr. ESCH. In this connection, it is not necessary for us to keep in mind the fact that this enormous appropriation for merchant shipping, and which will produce over a thousand ships, with a tonnage of 9,000,000 tons, and the vessels that have been comman-

deered by the Government of private shipyards, making 2,000,000 tons of shipping, will be an enormous amount of shipping after the war is over, notwithstanding the ravages of the U boats?

Mr. BARTINE. Of course, I can not say whether that is true. No human being can say whether it is true or not, but I do say this, that it makes no difference how much money the United States may invest in new shipping; we know perfectly well that the purpose of it is to offset the ravages of the U boats, and I claim that no money invested by the United States in building up the merchant marine should be used in such a manner as to pit the interests of one part of the country against those of another.

Competition of water with the rail would be all right if it did not result in unjust discrimination against other parts of the country and injure other parts of the country.

Mr. ESCH. One would have to leave something to the Shipping Board in that regard under the powers granted to it, but my thought is this: That at the end of the war here will be our Government with millions of tonnage of merchant ships, owned by the Government: what is the Government going to do with it?

Mr. BARTINE. That brings me back to the views which I expressed concerning the legal status of the Panama Canal. Suppose the Government does own a large number of ships, with those ships engaged in traffic between the Atlantic seaboard and the Pacific coast. Do you think it is in accord with sound public policy or a correct interpretation of the law that the Interstate Commerce Commission should make an arbitrary order allowing the railroads to lower their rates at the coast terminals in such manner as to practically put a large number of those ships out of business?

Mr. ESCH. Would it not be possible for the Government to use those ships and send them through the canal and thus earn back, through the tonnage tax, a part of the cost of operation of the canal?

Mr. BARTINE. Certainly, Mr. Esch, it is legitimate for the Government to do it, and it is desirable that it should do it; but, as explained, every time you lower the rates at the coast terminals of the rail carriers it is for the purpose of enabling the rail carriers to get a portion of the traffic that would otherwise go through the canal, and you are shutting off that revenue.

Mr. ESCH. You are sure that is the case?

Mr. BARTINE. Yes, sir.

The VICE CHAIRMAN. I have been struck with that line of the argument, and I should suggest that he could carry it further by suggesting the benefit to the country by taking away that business from the railroads, permitting the railroads to develop the interior of the country.

Mr. BARTINE. I have that in mind, Mr. Adamson, but I can not express everything in an hour or two. I feel if the railroads were deprived of this privilege which they have been claiming of lowering their rates at the coast points that they would be actually forced to use more endeavors to build up the intermediate country, which would mean to them a very large number of comparatively short hauls at very much higher rates, because the short hauls are always paid for at higher rates per ton per mile than the long hauls. The intermediate traffic would be more profitable than the coast traffic,

especially as the coast traffic, as it is claimed, only brings a rate a little over the cost of actual transportation.

Mr. ESCH. The thought I have in asking these questions is that after peace will come there will be a very considerable water-borne traffic between the coasts and traffic which will be protected against competition under the coastwise law, and therefore traffic which would be owned by the Government, and which probably the Government could not dispose of to other powers or would not dispose of it to other powers. What should the Government do with it?

Mr. BARTINE. I am very sure that I do not know; but if my idea prevails, there would be a great deal less trouble devolving upon the Government and a great deal less loss than comes through the maintenance of existing conditions. Suppose the Interstate Commerce Commission by an arbitrary order allows the railroad carriers to lower their rates so as to take unto themselves a large amount of the tonnage which would otherwise be carried by ships through the canal, the effect would be to put a large number of those ships out of commission and means a loss to the Government. I do not believe that the Government would stand for it very long, and that is what they are doing now with respect to the Panama Canal, because the principle is identical. Because I am earnest, Mr. Esch, do not think I am losing temper.

Mr. ESCH. Oh, we are trying to elicit your views, and I know every member of the committee wants to get your views, because you have studied the matter.

Mr. BARTINE. I have been used to debating all my life, and you know as well as I that you can not get anywhere in debate unless you are earnest.

Mr. ESCH. As to the blanket rates eastbound, how wide is the zone?

Mr. BARTINE. I do not know the exact geographical boundary lines of the various zones. There are some six or seven of them. If you will allow me, as you have brought up the zone theory, may I enlarge a little on that point?

Mr. ESCH. Certainly.

Mr. BARTINE. Senator Cummins in questioning some of the witnesses wanted to know why the people of Nevada, with a shorter haul, were satisfied with the same rate that was accorded to the coast terminals with a longer haul. That exact question was propounded to me by Judge Prouty at the first argument of the Reno case in Reno. Speaking from the bench and interrupting me, he asked me if I could see any reason why Reno should not have a lower rate than Sacramento or San Francisco. I was compelled to admit, in principle, I could not, but I said the railroads themselves had adopted the zone theory or system, and that the Interstate Commerce Commission had accepted that zone theory as sound; and such being the situation, we did not feel we had the smallest chance of securing the application of rates on a strict mileage basis, and we felt that if we had rates as good as those to the coast we would at least be upon an equal footing and would have no grievance to complain of.

Mr. ESCH. Now, you still have not answered the question as to the extent of the blanket eastbound.

Mr. BARTINE. I can not, Mr. Esch. I am not a rate expert and have not followed that closely. I have endeavored to deal with these questions on broad principles.

Mr. ESCH. You are aware of the fact that under the zone system with the blanket provisions it is possible for the Pacific coast cities, and even the intermountain cities, to get the same rate for the eastern terminal points as to the cities east of the Rocky Mountains and the Missouri Valley?

Mr. BARTINE. I should not suppose that the Pacific coast cities could get the same rates to the Atlantic coast as points 1,500 or 2,000 miles nearer the Atlantic coast.

Mr. ESCH. Suppose you found that the intermountain cities and intermountain States under the blanket system got the same rate as the Mississippi Valley——

Mr. BARTINE. I would not expect it. We would expect to pay something in addition, because of the greater length of haul from the intermountain country.

Mr. ESCH. And such a blanket rate would give the intermountain cities the advantage over the cities immediately east of the Rockies on eastbound traffic?

Mr. BARTINE. No; not under the long-and-short-haul clause, because under any circumstances we could not get any lower rates than they, and we would be only put on an even keel. We are not asking for an advantage; we are asking to be placed on even terms, and that is what the long-and-short-haul clause, as it is formulated, is intended to do. It is not a mileage proposition. It simply provides that there shall not be a higher charge for the shorter than for the longer haul.

Mr. ESCH. That is the statute.

Mr. BARTINE. That is the statute.

Mr. ESCH. The application of those blanket rates on eastbound freight has given rise to a great deal of complaint on the part of communities and whole States in the central portion of the country, because they contended it brought a competition from a great distance which they ought not to bear, and that they ought to have the natural advantages of their own section with reference to their own products. I merely cite it to show how difficult it is to make any rate scheme that will not cause some complaint in some part of the United States.

Mr. BARTINE. I am not optimistic enough to believe that it will ever be settled in such manner that some one will not feel he has a grievance, but we want to eliminate the worst grievance we have.

Mr. ESCH. Yesterday you intimated, with reference to the regional control of traffic matters, that you would prefer a region for the Pacific coast States proper and possibly two subdivisions in the intermountain country. Do you think it would be better in a wise administration of traffic matters to make your regions based on State lines or geographic lines or based on traffic area?

Mr. BARTINE. Well, I should say upon geographic area rather than State lines and rather than population, for this reason: Take the State of Massachusetts, for example. If it were physically possible, you could set 100 such States right down in the intermountain country and then have a good-sized margin all around. At the

same time, Massachusetts contains just about as many people as there are in the whole intermountain country. But the transportation problem in the intermountain States is vastly more important than it is in Massachusetts because of its small area and shortness of their hauls, and you will pardon me if I say that in reading the decisions of the Interstate Commerce Commission I have been interested and amused in noting the fuss that is made in the eastern parts of the United States over a difference of 1 or 2 or 3 cents per hundred pounds in the freight rate on a given commodity between two points, it being claimed that there is a discrimination, and if they make such a fuss over 1 or 2 or 3 cents per hundred pounds, how must the intermountain territory feel when there is a differential of anywhere from 50 to 75 cents per hundred pounds against them? I bring this out just to emphasize the importance of the transportation questions of the intermountain country, with distances so great, thus making the freight rates a vast item.

Mr. ESCH. You would prefer to adopt a regional system based on geographic lines, rather than traffic areas?

Mr. BARTINE. I would say geographical lines, certainly, because if you have the geographical lines the traffic area is necessarily increased, and where there is a very large area of territory affected, there is very much more chance for the traffic area to be increased.

Mr. ESCH. In your opinion, if regional commissions were appointed and that system of administration of the law were adopted, would it lead to expedition or would it add to the delays?

Mr. BARTINE. Well, I think I admitted in colloquy with Judge Adamson yesterday that I thought it might possibly make for delay. Now, understand me, Mr. Esch, I am not committed to this regional system at all. I would look with favor upon any method which would lead to a better geographical distribution of the membership of the Interstate Commerce Commission, the increase of its effective working strength, by an increase of the members or otherwise, but I am not committed to any particular method of doing that thing, but this thought has occurred to me: There is a great deal of weight, I think, to be attached to the suggestion of Mr. Adamson that the Interstate Commerce Commission itself could be increased and the 15 members, or whatever number might be fixed upon, taken fairly and impartially from all parts of the country, so that all should be represented. Then let these individual commissioners go and hold hearings in the various districts, just as the Federal judges pass around and hold sessions in the various circuits of the United States, and then I would go a step beyond that. I think—now, this is just a crude idea—I would go a step further and make a ruling similar to that which applies by law to the Circuit Court of Appeals. I would let the decision of an individual commissioner who hears a particular case stand as finality in cases of comparatively small magnitude, drawing the line at some reasonable point. That would do no harm, because the individual still has his access to the courts as now, if he feels that he is wronged.

Mr. ESCH. If you have the regions, whether 8 or 12, there would always be the likelihood that the regional commissions would give diverse opinions upon traffic questions although the questions might be identical in the different regions. You would therefore have a diversity of views as far as the divisions were concerned, and unity

The VICE CHAIRMAN. But does not Senator Cummins in his questions have reference to competition between different points?

Senator CUMMINS. I was about to say that I did not make myself quite clear. I did not intend to bring into my question the fourth section at all. I was basing it entirely upon the third section.

Mr. BARTINE. Yes; but I think, Senator, you did refer to the fourth section and ask if it was intended to guard against discrimination.

Senator CUMMINS. I did formerly; and I did not separate the two things sufficiently in my last question, but I put it differently. Assume a rate from Chicago to Portland imposed upon some given commodity; another rate from Omaha to Reno, there being no competition between the localities affected with respect to the commodity covered. Reno could not, under the third section, question the propriety of the rate from Chicago to Portland as being an unduly preferential rate.

Mr. BARTINE. It could not, there being no competition between them.

Senator CUMMINS. Although considering the rates in and of themselves there might be great disparity between them as compared with the service rendered in the two hauls.

Mr. BARTINE. But Reno would be in nowise injured.

Senator CUMMINS. Precisely; and therefore, in construing and applying the third section of the interstate-commerce law upon a charge that any given rate is unduly preferential or discriminatory, there must be, as a basis, a competition in business between the localities affected by the rates.

Mr. BARTINE. I think that is the case. That is intended to cover a situation where roads are actually in competition, or where communities are in competition.

Senator CUMMINS. Now, disregarding the fourth section for a moment and supposing that it is not in the law at all, if Nevada were complaining, or the people of Nevada were complaining, of a rate to San Francisco given in each instance upon westbound traffic, it would be necessary to show that Nevada or its territory is in competition with the territory of California in business, and that the disparity between the two rates injuriously affected the business of Nevada, would it not?

Mr. BARTINE. It would be, and I think it has been shown. That is what we have insisted upon.

Senator CUMMINS. I am examining it abstractly. I want to see, if I can, in what respect the law should be modified or strengthened to bring about more perfect justice.

Mr. BARTINE. Yes, sir.

Senator CUMMINS. Now, in all your proceedings before the Interstate Commerce Commission, that has been the underlying thought, has it not?

Mr. BARTINE. It certainly has.

Senator CUMMINS. And you have shown, or believe that you have shown, all the time, that the lesser rate given to the terminal points injuriously affected the development and growth of your community?

Mr. BARTINE. We have tried to do that, and I think we have succeeded.

Senator CUMMINS. Has that vital and fundamental proposition ever been disputed by the coast points?

Mr. BARTINE. Yes, sir; it has. It has been disputed in this way: They have persisted in carrying us back to the days of the clipper ships and ox teams, and have insisted that the true method of rate making was to take the water rate to the coast plus the additional charge the railroads might make—plus the local charge back from the coast to the interior points—and in that way they have claimed that we have obtained the very best natural rates, but of course entirely ignoring all the improvements that have taken place, denying to us the benefit of the railroad system that has been constructed and built up in this country, and, as I said before, keeping us back in the age of the clipper ships and ox teams.

Senator CUMMINS. Without regard to that, have they ever denied that you are in competition with the terminal territory and that you would develop faster if you had a rate that was properly proportioned to the terminal rate?

Mr. BARTINE. Well, they may have possibly denied that in a vague, general way. They have assumed that Nevada was developing just about as rapidly as its natural resources would permit. There has never been any satisfactory showing upon that point at all. It was never satisfactory to me, and I have always combated it, because it stands to reason that an unfavorable freight rate is a hindrance to the development of any community.

Senator CUMMINS. You believe, I assume, from the general course of your argument, that even if there had been no fourth section in the law you would have been entitled to the relief which you ask at the hands of the Interstate Commerce Commission?

Mr. BARTINE. I have not the slightest doubt of it, Senator Cummins.

Senator CUMMINS. So that without any modification of the law, even with the elimination of the fourth section in your case, justice, from your standpoint, would be secured?

Mr. BARTINE. I have not any doubt about it, provided, of course, that the law was properly administered.

Senator CUMMINS. Now, we come to the fourth section. Your view of it is that in no case should the privileges given in the fourth section, if any are given, be extended to a case in which a violation of the third section would not be permitted?

Mr. BARTINE. Oh, I think that is fair. I think the fourth section is intended to make this one particular form of distinction perfectly clear and objectionable and to guard against it specially.

Senator CUMMINS. I understand that view, but if the Interstate Commerce Commission had been convinced of that, in the absence of a fourth section, the intermountain case was complete and furnished a reason for a remedy, is there anything in the decisions of the Interstate Commerce Commission to indicate that it is fair to give that section, namely, the fourth section, an application that will destroy the third section?

Mr. BARTINE. I should say certainly not. It is an established rule of statutory interpretation, as you know as well as I do, that all statutes and parts of statutes in *pari materia* should be construed together and be made to stand together as far as possible.

Senator CUMMINS. I am thoroughly familiar with the decisions of the Interstate Commerce Commission, and in this connection I do

not remember any reference in any of them to that point, that in allowing the exception provided for in the fourth section of the act they are, in fact, neutralizing and nullifying the third section of the law.

Mr. BARTINE. The only thing that I can recall, Senator, is the expression I have just mentioned as coming from Commissioner Lane, and that only touched it remotely, that a shipper is entitled to something more than a just and reasonable rate. He is entitled to a non-discriminatory rate, which would indicate to me—

Senator CUMMINS. Do you believe that if the fourth section had not been in existence that Reno and Spokane and Salt Lake would have been given relief long ago under the third section?

Mr. BARTINE. Well, it is asking too much of me to request me to state an opinion upon that point, because we would have had to deal with the Interstate Commerce Commission, and then we would have had to deal with the courts, as the matters were contested there; but it is my opinion that we would have been better off in all these cases without the amended fourth section.

Senator CUMMINS. If I have correctly interpreted your argument or your statement, the effect of it is, it is believed on your part that the fourth section, as applied to this western situation, instead of being a fortification of the third section, which forbids discrimination, has been used to sustain a discrimination.

Mr. BARTINE. I think you are absolutely correct in the conclusion which you have drawn in reference to my testimony, and if it will not break in on your thought I should like to give a reason. May I?

Senator CUMMINS. Certainly.

Mr. BARTINE. If the fourth section had not been enacted every railroad practicing discrimination would have been the subject of a complaint. There we would have had a special case, and each case would have been decided upon its own merits. The fourth section was amended, and the Interstate Commerce Commission has so construed that law, that any number of railroads may join in petitions and the commission may then make a general and sweeping order covering the whole United States and call it special. For that reason we are worse off than we were before.

Senator CUMMINS. If, then, as between the two alternatives of maintaining the fourth section as it is and repealing it entirely, making no provision in the law with regard to the long-and-short haul, I take it that you are of the opinion that the country would be better off, relying upon the third section alone, forbidding discrimination.

Mr. BARTINE. I certainly feel that way, Senator Cummins.

Senator CUMMINS. Why would that not be, after all, the best solution of that question, with a positive prohibition against discrimination, leaving the Interstate Commerce Commission to apply that rule without any exception at all; that is, I mean undue or unjust discrimination, of course? Why would not that, in the end, with an intelligent and, of course, honest, Interstate Commission, do more to bring about a proper adjustment of the railroads of the country than anything we can provide?

Mr. BARTINE. For the simple reason, Senator Cummins, that you are putting the whole matter up to the Interstate Commerce Commission, which is composed of nine members, not one of whom is infal-

libile, and in dealing with each particular case under that third section the Interstate Commerce Commission would take into consideration all the facts and circumstances, and it might find cases which, in its judgment, would justify a higher charge for a shorter than for a longer haul. Now, if we have a plain, simple, brief provision prohibiting that particular form of discrimination then the Interstate Commerce Commission is deprived of all jurisdiction upon that point and can only deal with other forms of discrimination.

Senator CUMMINS. I do not even mean to suggest that what I am about to say applies to this western situation, but can you not conceive a case in which a greater charge for the shorter distance would be fair and would not result in any discrimination between localities?

Mr. BARTINE. Well, it would impose a considerable strain upon my imagination. I think I stated that yesterday. I can not conceive of a case and can not think of one in which a higher charge for a shorter haul along the same line in the same direction is justifiable. I can not imagine a case.

Senator CUMMINS. Viewed from the standpoint of the cost of service and operating expenses, I think you are right—at least I can not conceive of any such case—but viewed from the standpoint of the development of the country, it seems to me there may be such a case, but I agree with you that it always ought to be done with no unjust preference or discrimination.

Mr. BARTINE. Yes, sir.

Senator CUMMINS. And I would like to see the law so amended, if it needs amendment, that that shall be the supreme command of the statute, that each community shall have its fair chance to grow and develop, and, of course, be entitled to reasonable rates, and I have been suggesting these things because they have been running through my mind, and I have them in mind, and because this blanket rate is utterly mysterious to me. I do not understand why Reno should have the same rate to the East that San Francisco has, or to pay the same rate, and have the blanket rates as far east as Omaha—I do not think it does—but if it does, why Reno should get into the East at the same rate as Omaha gets into the East. There may be reasons for these things, but they are not obvious to me.

Mr. BARTINE. May I make a suggestion there?

Senator CUMMINS. Yes, sir.

Mr. BARTINE. I am not here for the purpose of defending the zone system, which, of course, means the blanketing of rates, but I think I can see what the motive of the railroads was in establishing these zones and blanketing the rates as they have. Unless you have the zone system, you are going right back upon the mileage basis, if you consider nothing but distance. The fixing of rates upon that basis is almost impossible. It is at least impracticable, because there are so many communities and so large a number of commodities.

Senator CUMMINS. I perceive that, and, of course, the zone system must be admitted into any practical adjustment, but the zone system can easily be abused just as easily as the long-and-short-haul clause. When the Government undertook to establish a zone system for the shipment of parcels post matter these zones were reasonably narrow and have been practically all constructed upon what might be assumed to be the cost of service. But when it is said that California has a certain rate on citrus fruit to the eastern part of the United

States, and then when they began to grow it in Arizona, that Arizona should pay the same rate, that seems to be a widening of the field unnecessarily and unreasonably, possibly. What do you think of that?

Mr. BARTINE. In view of the fact there are only six or seven zones in this vast domain of ours, I think your suggestion is a very good one and entitled to a great deal of weight. I have no doubt the zones are too large and great and varying conditions might arise in the same zone. A zone is based generally on the theory that the conditions are substantially the same throughout the entire zone, but if the zone covers an area of 500,000 square miles it is likely that there may be varying and different conditions in the zone. I think if the zone system is preserved that it might be well to make the zones smaller.

Senator CUMMINS. If I gather the views of the railways correctly in establishing these zones—and they are in all forms and cross each other at a thousand different points—they have tried in a general way to annihilate distance and to give every community producing a certain article an even opportunity to get into the market with that article on even terms. I have mentioned one of the cases of the lumber rates from the northwest part of the country to the Mississippi River Valley or the Mississippi and Missouri territory, in which there was an attempt made to enable the lumber of this country to get into this territory at about the same rate as lumber from the southern or northern part of the country got in at. Now, just how far we should disregard what might be termed the cost of service theory, in order to put in the postage-stamp theory in this country. I do not know. It seems to me that that question is involved in all this discussion about the long-and-short-haul clause.

Mr. BARTINE. Yesterday I suggested that every man was controlled more or less by his environment. You could not have failed to note from my statement that I am approaching this subject from the viewpoint of the intermountain country, in which I am especially interested, and in which discrimination had presented itself in the most aggravated form. It is only natural that I should do this because I have lived in that State not, like my young friend Gardiner, 8 years, but 48 years. When you consider my extremely youthful appearance, you would hardly believe that, but it is one of those painful truths that we must admit at times.

For 40 years of that period I have taken an active part in the public life of that section and, naturally, I approach this great question from the standpoint of the intermountain States and their interests. In all that I have said with regard to the long-and-short-haul clause I have had in mind the charging of more for a shorter than a longer haul on the same line within the formula of the statute. I recognize the fact that a haul from the north of 100 miles might be very much more expensive than a similar haul from the south, but that would not come within the principle of the long-and-short-haul clause.

Mr. SIMS. Mr. Bartine, speaking of the blanket system of rates, the present rates on parcel-post traffic is upon the blanket or zone system, is it not?

Mr. BARTINE. Yes, sir; I believe it is.

Mr. SIMS. I do not know how many there are.

Senator CUMMINS. Seven, I think.

Mr. BARTINE. I have never had anything to do with it.

Mr. SIMS. I suppose you will admit, for a short haul, including all unloading and forwarding expenses on a given quantity of freight, it is more expensive per mile on account of these charges than it is on a proportionately greater haul.

Mr. BARTINE. I think there is no question, Mr. Sims, that the cost per ton per mile is greater for a short haul than for a longer one if there is any material difference in the length of haul. I think it is generally conceded.

Mr. SIMS. Have you ever heard of the railroads proposing to carry parcel-post packages to the sixth zone for less than they carry them to the fourth zone?

Mr. BARTINE. I have never heard of their doing that, but the Parcel Post Service is purely a governmental proposition and the Post Office Department has been operated without any regard to distances. There has never been a time when it cost any more to send a letter from New York to San Francisco than from New York to Jersey City, because the Government is not in the business for the purpose of making money. I do not know what the arrangement is between the Government and the railroads in regard to carrying parcel-post matter. I do not know what it is.

Mr. SIMS. The parcel-post matter is purely a traffic and freight transaction, is it not?

Mr. BARTINE. It is between the Government and the railroad.

Mr. SIMS. The actual service performed by the railroad company is a freight-traffic service; it is not a passenger service—of course. I am not speaking of the first-class mail matter—but the conveying of parcel-post matter is simply the carrying of what the express companies would carry, what the railroads would also carry, if the Government did not take charge of it, and the railroads do actually carry it as far as that is concerned, but the entire adjustment of rates on parcel post is by the zone system, is it not?

Mr. BARTINE. I could not say that that is entirely true. It may be, but, as I say, I have had nothing whatever to do with that, but knowing what little I do about governmental affairs, I may say that the carrying of the parcel post is purely a matter of contract between the Government and the carriers, the carriers making the best contract with the Government that they can, and inasmuch as, in its general mail service, the Government has never considered the element of distance at all, it is possible that that same principle would be maintained in the carriage of parcel-post matter.

Mr. SIMS. It does make a difference as the law is enacted and carried out; the Government charges one fee or price for zone 1, and a different price for zone 2, and so on, increasing as the zones increase in distance.

Mr. BARTINE. Yes, sir.

Mr. ESCH. You might make your analogy more perfect by citing the zone system as applied to express rates.

Mr. SIMS. I have my mind on this other proposition now. Before the Government took from the railroads the carrying of this package freight—certain packages as go now by parcel post—the railroads performed that same service before and covered the whole country, although it is true they did it through the form of express com-

panies, but the express company is nothing but an arrangement by which the railroads still carry the business and do the work, but get rid of a lot of clerical work, and detail work, and expense that they would otherwise as railroads incur. But the zone system, which is simply nothing more than a blanket system of rates between certain distances, applies absolutely without exception, as I understand it, throughout the United States as far as the delivery of parcel-post packages is concerned. Now, suppose the steamship companies should say, on the Pacific coast and on the Atlantic coast, to the Government of the United States, "We will carry all these packages that the railroads do, the same distance the railroads do, or to the same points that railroads carry them, for 60 per cent of what the railroads carry them," would the railroads then, do you suppose, come in and make a proposition to the Government that "We will reduce our charge 60 per cent on all water-competing parcel-post service?"

Mr. BARTINE. Of course I have no way of knowing what the railroads would do in that case. Like my learned and distinguished predecessor, Patrick Henry, I have only one light to guide my footsteps, and that is experience. It would be up to the Government, and optional with the Government, as to whether or not it made a contract of that kind.

Mr. SIMS. I catch your idea.

Mr. BARTINE. May I go further?

Mr. SIMS. Yes.

Mr. BARTINE. I am dealing with this whole matter as a practical proposition. The carriage of parcel post does not present the question of discrimination, which is the evil we are complaining against. Those packages are small in bulk and weight, and the stuff in general is not carried in wholesale bulk for the purpose of being distributed and sold, or anything of that kind. Now, it is not hard upon A to pay a certain rate on a parcel-post package, if point B farther on got a similar package at the same rate or a lower rate, which, as a matter of fact, he does not. But the objection we are making is not that we should have the benefit of the shorter haul, but that we should not be charged any more. That is all. But, in the parcel-post arrangement, while I am not familiar with it, I am perfectly sure there is no higher charge for a shorter than a longer haul on the same line in the same direction.

Mr. SIMS. There is absolutely none, and I was trying to make it apply to the present situation; that if the railroad carrier can not perform a service as cheaply as the water carrier, that the water carrier should not be prevented from carrying it as low as it can or is willing to carry it.

Mr. BARTINE. I have taken the position all along that the water carriers have as much right to live as the rail carriers, and it is to the interest of this country to build up ocean carriage, which was one of the purposes of the construction of the Panama Canal, and one should not be permitted by artificial means to beat down the other.

Mr. SIMS. But suppose the steamship lines plying between the Pacific and Atlantic see a vast amount of parcels-package stuff passing between these two sections of the country, and say to the Government of the United States, "You are sending these packages

by the railroads. Now, we will carry them for just half what the railroads do and take the entire business from coast to coast." Suppose this amounted to \$100,000,000; suppose the Postmaster General comes to Congress and says, "We have this offer to carry these packages for \$50,000,000 less than the Government pays now." Suppose he says it will be just as well to carry them that way and asks Congress what to do? Do you not suppose Congress would say, "You accept the \$50,000,000, provided they can serve the people of the country as well"?"

Mr. BARTINE. I think I catch your idea now.

Mr. SIMS. Now, the railroads come along and, as far as the coast-to-coast packages are concerned, say, "We have to run our trains in connection with the other mail service, and we will take this stuff at that rate." Would not Congress say, "We will let it go that way; anyhow, Congress saves \$50,000,000 and the people are served"?"

Mr. BARTINE. Congress has a right to do as it pleases for the best interests of the people, but we are dealing with the Interstate Commerce Commission, which is not making laws but is administering laws. I think, if you will pardon me, Mr. Sims, that a more parallel case would be this: Suppose the Government made this advantageous contract with the water carriers and then the Interstate Commerce Commission should step in and make an order allowing the rail carriers to apply the same rate at the coast terminals—which, I might say, I do not think would come within its jurisdiction; I do not think the Interstate Commerce Commission could regulate the rate on mail matter, and I do not think it would attempt it—

Mr. SIMS. They do now. They consider it in making ocean rates.

Senator CUMMINS. That is only between the Government and the carrier. It does not affect the rate paid by the person who receives the package.

Mr. BARTINE. That is so, but suppose the Government had an advantageous contract of that kind with the water carriers and that contract was to run a considerable length of time, as they always do, and suppose the Interstate Commerce Commission steps in and make an order that puts those water carriers out of business?

Mr. SIMS. I do not think the Interstate Commerce Commission could overrule the direct authority of Congress to accept the lowest bid.

Mr. BARTINE. I was thinking of the principle, because that presents a parallel case.

Mr. SIMS. Do you not think the Parcel Post Service, as far as it goes, has been decidedly of advantage and to the best interests of the public as compared with the former express service?

Mr. BARTINE. Well, taking it as a whole, I would not be able to say whether it has or not. The express service in our section of the country has always been exceedingly good. I do not think the Parcel Post Service is any better, and, as a rule, it is only used, generally speaking, for the carrying of small packages, but I am really not in a position to say whether it is better or worse, because we have had nothing whatever to do with that.

Mr. SIMS. It is much less cost to the people.

Mr. BARTINE. Well, that is an advantage.

Mr. SIMS. It has been less than they formerly paid.

Mr. BARTINE. Yes, sir.

Mr. SIMS. Is it not a fact that it is a better service and more prompt service than express service that is given?

Mr. BARTINE. I can not say that it is in our section. It may be so generally.

Mr. ESCH. The Government does not have a collection service and express companies do.

Mr. SIMS. Which is a very unnecessary service. When I left Lexington last October I bought a Tennessee ham, and in order to be sure I would get it in time I expressed it and watched them load it. Three days later the man with whom we were stopping sent by parcel post some fresh string beans. We got them, but not the ham, and I do not know when we will get it. The railroads seem to have paid more attention to the mail matter, as to which they have a Government contract, than they did to the express matter.

Senator CUMMINS. You ought not to tempt the employees by putting a ham in their possession.

The VICE CHAIRMAN. Ham was more tempting than the string beans evidently. [Laughter.]

Mr. SIMS. My information, as far as it has gone, taken by and large, including the Rural Service, is that the Parcel Post Service is one of the most popular services in the United States, and it is nothing but a transportation service, being the transportation of such stuff as goes as freight and not intelligence, and making a ham postal matter was simply an act of law, and therefore making a matter mailable is nothing but statutory law.

The VICE CHAIRMAN. That is what you call *malum prohibitum* and not *malum in se*.

Mr. SIMS. As far as I am concerned, I can not see any difference in principle, whatever, in mailing a ham and mailing a book the same way the same distance, or at the same cost, or sending it by express or freight; and it seems to me we should view this question from the by and large viewpoint, what is best for the whole country in all the details and ramifications of service to be performed. Having seen your State and having gone through it, and thinking it has not been as much favored by the Maker of the surface as others have, in legislation I think you should have a square deal; but we have to decide the matter with all the evidence before us.

Senator CUMMINS. The railroads claim that the Parcel Post Service is not profitable, from the fact that the Government has made the railroads carry the parcel-post matter for nothing for the last four or five years. We make contracts for weights, and we make them only once in every four years. I have heard this complained of.

Mr. BARTINE. Mr. Sims carried me into a new field and took up the matter of parcel-post transportation, something with which I have had nothing whatever to do, and to which I have given no thought, and my answers are "right off the bat," to use a slang expression. In order to be secure on the record, I want it understood that I am not definitely committed to anything with regard to the Parcel Post Service.

The VICE CHAIRMAN. I make the point that we should not discuss the parcel post without the presence of Judge Moon.

The CHAIRMAN. Your contention is that the public interests require that the rail carriers should not be permitted to drive the water carriers out of business through the Panama Canal?

Mr. BARTINE. That is my contention—by legal methods. If they can do it by natural competition, of course, they may.

The CHAIRMAN. How far do you think the rail carriers should be permitted to go in the line of competition?

Mr. BARTINE. I think they should be permitted to go just as far as they possibly can without practicing discrimination against their patrons, who are removed from the points of competition; for example, if one of these transcontinental lines wishes to lower its rates at the coast in order to meet competition, they should be permitted to do so, but it should not be permitted to do so under circumstances that would work a wrong and injustice to the people of Reno and Winnemucca and Elko. They should scale their rates justly.

The CHAIRMAN. You believe that the public interest requires that, as far as the general public is concerned?

Mr. BARTINE. Yes, sir.

The CHAIRMAN. Now, with reference to the interests of the coast ports, what do you think would be the effect upon them and the jobbers in these coast ports, and the prosperity of the coast ports generally, if the policy upon which you insist should be carried out?

Mr. BARTINE. My opinion is that the coast points, upon the whole, would be benefited by removing this discrimination. The objection to the contention of the intermountain territory, on the part of the coast cities, has always come from the jobbing interests. Now, the amount of the jobbing interests involved is scarcely a drop in the bucket here in the State of California compared with the aggregate of business. If this change were made which we ask for, these jobbers could never be put out of business. They would only be deprived of a very small part of it, and that is the jobbing trade which consists of redistributing goods they have received from the east. It would still be in a position to job all the products of California; and if that resulted in the upbuilding, as it undoubtedly would, of the intermountain country, it would furnish a very much better market for the products of California.

The CHAIRMAN. Do you think the jobbers are principally engaged in jobbing the products of California?

Mr. BARTINE. Yes, sir.

The CHAIRMAN. Your contention is that the enlargement of the population of the intermountain region would be to great advantage of the coast cities?

Mr. BARTINE. Why, I think there is no doubt about it: and taking Nevada as a sample, you will pardon me if I toot that State's horn a little bit.

The CHAIRMAN. Certainly.

Mr. BARTINE. The commercial travelers and drummers have repeatedly said that, in proportion to population, the State of Nevada is the best market in the United States for the sale of goods. It has always been a State where high wages prevail, where high price levels obtain, and the worker has been well paid for his services. He is a liberal spender and buys largely the best quality of goods. Now, if the population of Nevada were increased—we will say 100,000, to follow your question propounded to Mr. Gardiner the other day—

there would be 100,000 additional consumers in the State of Nevada, and the railroads in bringing freight from the East would save, in the first place, by leaving off the goods there in Nevada, making the haul very much shorter and reducing the cost of transportation. That is only one thing. There would be a population of 100,000 added along the lines of the railroad. These 100,000, I should venture to say, on an average, would buy and consume twice as much as the same number of poorer people in San Francisco, because they are able to do it.

The VICE CHAIRMAN. If the chairman will pardon me, would not that hundred thousand additional people also produce something additional for the railroads to haul out?

Mr. BARTINE. Surely. If they were there, they would certainly be doing something, and we are now, thanks to Senator Newlands's water projects, engaging more largely in agriculture. One hundred thousand people would have to be doing something, and there would be not only more goods brought in but more goods carried out and more goods traveling from point to point in the State, while the 100,000 people living in San Francisco would simply receive the goods and consume them, and that is all there would be to it.

The CHAIRMAN. The State of Nevada is mainly served by the Southern Pacific Railroad?

Mr. BARTINE. Yes, sir; and I think for a great many years it will be mainly served in that way.

The CHAIRMAN. I believe, with you, that Nevada has been the Southern Pacific's neglected asset. I wanted to ask you whether, so far as the Southern Pacific is concerned, 100,000 people added to the population of Nevada would be of more benefit to it than 100,000 added to the population of San Francisco?

Mr. BARTINE. It seems to me, Senator, that what I have said practically answers that question. I think they would be very much, for the reasons I have given you.

The CHAIRMAN. Then I understand you to contend that the public interest demands that the water service, as the cheaper service, should not be lessened by any artificial action.

Mr. BARTINE. That is my position; yes, sir.

The CHAIRMAN. You also insist that, so far as the port cities of the Pacific coast are concerned, engaged in the jobbing business, those cities and the entire production of California and the coast States would be benefited by a policy which would increase the population and the industries of the intermountain regions.

Mr. BARTINE. They would be benefited and at the same time a rank injustice would be wiped out.

The CHAIRMAN. You have also claimed that the interests of the intermountain region itself would be largely enhanced by this policy?

Mr. BARTINE. I have no doubt of it.

The CHAIRMAN. Have you any idea as to whether the transportation of rail tonnage has increased of late years?

Mr. BARTINE. Only a vague idea. I will not say vague, but a very general idea. When the Spokane case was under consideration in 1906 the estimate was that the total amount of rail tonnage reaching the coast was 3,000,000.

The CHAIRMAN. When was that?

Mr. BARTINE. Eleven years ago, in 1906. In all subsequent hearings that figure, 3,000,000 tons, was accepted as being approximately the amount of rail tonnage, the assumption being that there had been no increase, although we knew that our western country had grown immensely during that time. Still, in our hearings, the rail carriers, in defense of the coast rates at the terminals, have constantly dwelt on the increase of the water tonnage, assuming that the rail tonnage remained the same. Just before the hearing in Washington which led to the cancellation of the schedule C order I wrote to the traffic officials of the different railroads reaching the Pacific coast, asking for specific figures as to the amount of their tonnage. The Western Pacific was in the hands of a receiver at that time, and in one week I got the tonnage from that road. It was comparatively small because the road was in a bad way, but every other road politely declined to give the information, saying, it was too much trouble and too expensive. When we argued the matter before the Interstate Commerce Commission, I requested that the commission require the railroads to furnish the figures showing the amount of westbound tonnage that reach the Pacific coast. It could compel it. A State commission, of course, could not do so. I do not know what action, if any, the Interstate Commerce Commission ever took upon that request—I think it took none—but among the witnesses who testified there was a very prominent official of the Pennsylvania Railroad. I do not recollect his name, but he was evidently a man of high standing upon that road, a very intelligent man. He was asked the question point-blank if he thought that 7,000,000 tons carried by rail was an overestimate, and he said he did not. He said he thought it was a moderate estimate, for the reason that there was about a million and a half tons of structural iron and steel alone.

Now, that is a little in the way of a basis to go on. There is no doubt in the world that these figures can be secured. Along that line, Senator Cummins has asked some of the witnesses whether the water competition was ever such as to put any considerable portion of the railways' equipment out of commission. The evidence at that time showed that the equipment was thoroughly employed, and had been even during the time when the traffic through the canal was at a high figure; that there was a congestion of freight in the railroads and an embargo directed. Then at that time I introduced as exhibits the petitions of the Southern Pacific Co. to the California commission and to the Arizona commission, asking leave to incur an indebtedness of \$6,000,000 for the purchase of new equipment, partly to replace old and worn equipment and partly to meet the increasing demands of new business, all of which goes to show that the traffic to the coast must be increasing, and that it has always amounted to as much in volume as the railroads could handle.

The CHAIRMAN. Then the largest tonnage that you have heard mentioned in these proceedings that would be likely to go through the canal, if the canal had the free opportunity to carry that tonnage, would not exceed 7,000,000 tons?

Mr. BARTINE. That would be the entire amount carried by rail.

The CHAIRMAN. That is the rail tonnage, then?

Mr. BARTINE. Yes, sir.

The CHAIRMAN. Very well. Now, then, the amount that the railroads would lose would not exceed 7,000,000 tons?

Mr. BARTINE. They would have to lose it all to lose 7,000,000 tons, if that is the correct figure.

The CHAIRMAN. Very well, we will assume that the water carriers through the canal should make rates so low that it would get all the coast-to-coast tonnage. Have you any idea what that tonnage would be?

Mr. BARTINE. Only in a rough way. We have the figures in our office, but I can not carry them around in my head. I suppose of the 7,000,000 tons of coast-to-coast traffic that which would naturally move by water probably would not exceed one-fourth of the total that moves from the Atlantic seaboard, because the railroads furnish the more desirable service. If you will permit me, Senator, I wish to say that latterly the railroads have rather concentrated their efforts upon retention of the tonnage from the Atlantic coast seaboard region to the West, because it is from that region that the tonnage to the Pacific coast mainly moves by water; and upon that point—having again in mind, Senator, Senator Cummins's suggestion about the development and growth of the interior country—I desire to say that the Atlantic coast region must naturally expect to lose some of that coast-to-coast trade through the development of the country. The natural effect of the development of the country is to move the great manufacturing industries farther and farther back, and it has already been carried to such an extent that Cleveland, Detroit, Chicago, St. Louis, Omaha, Kansas City, and even Denver have become great manufacturing centers. They must, of necessity, take a great deal of business from New York and other eastern cities. New York will always have a great field, but it must expect to yield much to the interior of the country, because the tendency of all commerce is to seek the shortest lines of carriage.

The CHAIRMAN. Assuming that there are ships ready to transport everything that could go through the canal, would there not be a large tonnage that would come to the intermountain region from the region to which you refer, the Mississippi Valley, and so forth?

Mr. BARTINE. The evidence shows that the quantity from that section which has been carried by water is negligible; that any competition of that kind is what our railroad friends call potential. It has been claimed that there is water competition between Iowa and the Pacific coast, and long years ago evidence was given showing that there had been a shipment of 3,000 tons of starch from Iowa, by water, to the Pacific coast. I think it was carried by rail to New York and taken by water to the Isthmus and across the Isthmus to the Pacific Ocean and up the Pacific coast to San Francisco. We have had those 3,000 tons of starch blown into our faces ever since. We have heard of no other water-borne freight from Iowa.

The VICE CHAIRMAN. Why did it not come down the Mississippi River from Iowa? That is potential, is it not?

Mr. BARTINE. I do not know anything about that.

The CHAIRMAN. Assuming the water carriage was developed to the highest degree, so that ships were available to carry at reasonable rates, the result of competition between each other, tonnage through the Panama Canal, whether that tonnage originated on the Atlantic coast or in the intermountain region, I wish to get some idea of how much tonnage the transcontinental carriers would lose by that oper-

ation, assuming that the water carriers were at the highest degree of efficiency.

Mr. BARTINE. It is not so much a question of water carriers being at the highest point of efficiency as it is the amount of freight available for transportation that way. I have indicated that at the time the schedule C order was made the tonnage through the canal during that period of time was at a very high figure, and it was undoubtedly due to the fact that business men held back their shipments awaiting the opening of the canal. There are only certain classes and kinds of goods that can be advantageously shipped by water, being those in which the element of time is not important and those not likely to be damaged by salt water, storms, and so forth. These goods had usually come from the Atlantic ports, and it appeared at that time the ships had carried the maximum, which was about 1,000,000 tons. That 1,000,000 tons, added to the 7,000,000 tons carried by the rail carriers, amounted to 8,000,000 tons in all. So the amount carried by water was only one-eighth of the whole, or one-seventh of the rail carriage.

The CHAIRMAN. Assuming that the water carriage through the canal was developed to a much higher degree of efficiency than existed at that time and that the rates were what it is claimed, namely, that the water carriage through the canal can be profitably conducted for \$6 a ton, and assuming that the canal would get the entire 7,000,000 tons that you speak of of transcontinental traffic instead of having only 1,000,000 tons, that, at \$6 a ton, would make \$427,000,000 for the transportation of that 7,000,000 tons through the canal to the Pacific coast. Now, then, on the other hand, assume that the railroads carried that 7,000,000 tons, at a cost of \$15 a ton, which would make \$105,000,000. Taking into consideration the interest of the entire Nation, do you think it is best that the service should be accomplished at a cost of \$42,000,000 by the water carriers or \$105,000,000 by the rail carriers?

Mr. BARTINE. Senator, you are suggesting a proposition now that, to my mind, is altogether abstract and a condition that can not possibly arise. I am endeavoring to keep this question down to a practical basis, so far as I can. If you consider just those two figures, I would hardly know what to say. I would say, considering the country as a whole, I think it would be better for the rail carriers to carry it at the rate named. It would mean more for the development of the country.

The CHAIRMAN. At \$15 a ton?

Mr. BARTINE. Yes, sir; because that is simply a coast-to-coast proposition, while the rail carriers would pick up enormous quantities of freight along the lines, local and otherwise.

The CHAIRMAN. But they would not be prevented from doing that—

Mr. BARTINE. What is that?

The CHAIRMAN. The railroad carriers would not lose any business except the 7,000,000 tons? Supposing both these carriers are in existence—

Mr. BARTINE. I suppose you had in mind that that was the entire business of the rail carriers. In that case, putting it that way, I would say it would be better to have the water carriers carry the freight, if it can be done just as effectively.

The CHAIRMAN. From the standpoint of the public interest, it is much better that the service should be done for \$42,000,000 than for \$105,000,000?

Mr. BARTINE. Certainly; I did not quite catch the full scope of your question.

The CHAIRMAN. I believe in the full development of water carriage of this country and of every river from source to mouth, and I think it has been a very mistaken policy that has led to the almost extinction of water carriage, with a view to enabling the railroads to monopolize the carriage. I understand why they would be contentious for tonnage during the periods of their existence when they were the pioneer carriers reaching out for traffic, and I can understand why, as a business matter, they would resort to every expedient to take away and impair the water carriers in order that the rail carriers could absorb it, but we all know now that the railroads have gotten practically to the capacity of their equipment, and it seems to me it is unquestionable that it is to the public interest to develop water carriage to the fullest extent, whether on rivers or lakes or the great waterways provided along the Atlantic coast line.

Mr. BARTINE. I fully concur in that.

The CHAIRMAN. I think, also, while I would be anxious to have that policy adopted, without any radical wrench, without imperiling the prosperity of any community such as these port cities, etc., I believe the time has now come when these things can be done with positive advantage to the railroads themselves and to the port cities and every interest affected. I do not see how the processes of readjustment can injuriously affect anyone or anything.

Mr. BARTINE. Along that line, let me make one statement: I am in accord with that view, and it is my impression—and I will carry it further—it is my firm opinion that, under the utmost stimulus that can be given to ocean navigation by this country, there will always be an abundance of business for the railroads. The country is so vast in its extent that it is simply impossible, having a narrow fringe of coast line on each side, that if that traffic were all taken from the railroads, to put them out of business.

The CHAIRMAN. How about the cost of service in Nevada as contrasted with the general transcontinental service, we will say, from the Missouri west?

Mr. BARTINE. Why, it may sound strange to some people, considering the sparse population and apparently small business of the State of Nevada, when I say that the ratio of expense to earnings of that portion of the Central Pacific line traversing the State of Nevada is lower than it is on any other portion of the Southern Pacific System. That was shown by the railroad people themselves the first time we locked horns with them in a legal proceeding. They filed affidavits by their auditor showing that the cost of transportation in the State of Nevada was less in proportion to their earnings than obtained on any other part of the system. The reason is that it is nearly level and easily traversed. There are no hard mountain climbs within the State of Nevada, while outside, both ways, there are difficult and very expensive transportation problems to meet.

The CHAIRMAN. You were speaking to me about the effects in this connection, with reference to proposed increases in railroad rates,

in order to meet the war expenses—the so-called 15 per cent increase. Suppose you state to the committee what your views are with reference to that.

Mr. BARTINE. The railroads of the country have an application pending before the Interstate Commerce Commission asking leave to make a general increase of their rates, amounting to 15 per cent. Upon that point I am in accord with Mr. Mann, and it is one of the very few things connected with this question of transportation that I do agree with him about. I do not think that a horizontal raise of 15 per cent or any other percentage would be just, because there are some freight rates now that are higher relatively than others, and if you raise them all 15 per cent it would increase the differential. Now, that point comes right home to us in Nevada. When that first petition for a horizontal advance of 15 per cent was filed by the railroads, we forwarded a protest against it, claiming that the action was then premature, that the developments had not proceeded far enough to justify the roads in asking for such an advance, and that in no event should it be horizontal. Then we proceeded to point out that the average scale of rates in the State of Nevada was much higher than almost anywhere else—certainly higher than anywhere else upon the systems of railroads which traverse our States, and if there was a horizontal advance or any advance, as long as that differential existed, it would widen the spread and increase the differential against us. As an illustration: Suppose the rate to San Francisco was \$1, a 15 per cent advance would make \$1.15; suppose the rate on the same product or commodity was at Reno \$1.50, there is a differential of 50 cents. Suppose we add 15 per cent to that. It is \$1.725; instead of having a 50 cent differential it is 57½. Therefore, we asked the commission to remove those differentials and put us upon an even keel, and then so far as providing fairly for the railroads is concerned, we will stand our share.

The CHAIRMAN. Mr. Bartine, it appears that the Interstate Commerce Commission on the 30th of June, this year, made an order which met the expectations of the people of the intermountain region. Is that the fact?

Mr. BARTINE. That is the fact.

The CHAIRMAN. It did meet their expectations?

Mr. BARTINE. That is the fact.

The CHAIRMAN. That order has been suspended in order to enable the commission to inquire into the reasonableness of the increase of the rates consequent upon that order?

Mr. BARTINE. Yes, sir.

The CHAIRMAN. And assuming that the commission will act upon that within a reasonable time, and that the order of June 30, 1917, will become effective, what need is there of legislation upon this subject?

Mr. BARTINE. The need for legislation is this: In the very opinion to which you refer, the Interstate Commerce Commission suggests that upon the recurrence of water competition the matter can be reopened and proper concessions made to enable the railroads to meet that situation. As long as it stands as it now is, and with the interpretation placed upon it by the Interstate Commerce Commission, we are at the mercy of that commission, and we will never know when

the change may come and restore the grievances which we have been fighting so long.

The CHAIRMAN. Your contention is that even if water competition is fully restored that this discrimination should not be again authorized?

Mr. BARTINE. My contention is that there never has been water competition to justify it, and my belief is that there never will be.

The CHAIRMAN. Your contention is that even if that water competition is made fully effective it ought not to operate in such a way as to create a discrimination against the intermountain region?

Mr. BARTINE. Certainly.

The CHAIRMAN. We are now in war, Mr. Bartine, and there is, of course, a reluctance upon the part of Congress to engage in any legislation that would be disturbing particularly to the transportation interests upon whose successful operation really depends the success of the war. Now, what have you to say with reference to that?

Mr. BARTINE. I have to say, Senator Newlands, that we have watched the course of the railroads since the war declaration was made with feelings of profound admiration. They have come to the aid of the Government with a magnificent patriotism and a desire to help that leaves nothing lacking, as it seems to me. I am willing, as I said before, that any legislation which is reasonable and which is necessary to enable them to meet the increasing burdens which they have taken upon themselves and are taking, but I am altogether unable to see how any pressure brought about by the emergencies of the war can possibly justify discrimination against any portion of the railway companies' patronage. Wipe out the discrimination and then give to them all reasonable relief—

The VICE CHAIRMAN. I suppose Judge Bartine is aware that in recent legislation we made provision that the commission, if it found it proper, could allow a higher rate for material transported under the preferential order of the President.

Mr. BARTINE. That, of course, would have a bearing.

The VICE CHAIRMAN. That is war legislation. It may, by reason of compliance with the President's order, find it reasonable—the commission may allow higher rates.

Mr. ESCH. Under the order of June 30, 1917, the discriminations permitted under the fourth section will, of course, be eliminated. That will permit the intermountain section during the period of the war, and for a certain period beyond that, to enjoy a level of rates with the coast terminals.

Mr. BARTINE. The order of June 30 would put us for the time being—as long as it stood—in exactly the same position as if we had an ironclad long-and-short-haul clause.

Mr. ESCH. And would eliminate the discriminations between the intermountain and coast terminals on schedule C commodities?

Mr. BARTINE. Yes, sir.

Mr. ESCH. You also stated in your opinion it would take several years after the war ceased before there could be a full restoration of water competition.

Mr. BARTINE. I think so.

Mr. ESCH. If that is true, that would permit the intermountain section, for the period of the war, and for a period of years after—say three or four years—even rates with the coast terminals. Do

you hope, or do you expect, that during that time the intermountain country can show such an advance in growth, development, and prosperity as to give you the final and conclusive argument, should the railroads seek to restore this differential?

Mr. BARTINE. Now, you are leading me again into the field of conjecture. I have no idea of what the development will be. It is purely a matter of conjecture as to when water competition is to be restored. If we are to judge from the way the Interstate Commerce Commission has acted in the past, it would take only a little water competition for that body to restore the differentials that have been removed. I do not know what the development will be, and I think we have already made our case. The great principle of right and wrong is involved, and whether we grow or not, we are entitled to a fair deal.

Mr. ESCH. At any rate, some valuable experience will have been gained.

Mr. BARTINE. It will take time to demonstrate such things, I admit. But we have had many long years of experience in these matters, but others have monopolized most of the substantial benefits.

STATEMENT OF HON. H. F. BARTINE, CHAIRMAN NEVADA RAILROAD COMMISSION, CARSON CITY, NEV.

MADE BEFORE SUBCOMMITTEE OF SENATE COMMITTEE ON INTERSTATE COMMERCE, MARCH 20, 1918.

Mr. BARTINE. Mr. Chairman, permit me to say at the outset that I am not a rate expert. I have never made anything of a specialty of that line of railroad commission work. From the beginning I have acted as the attorney and my associates, together with the secretary, have given a great deal more attention to the matter of specific rates than I ever have. I have confined myself to the particular branch of the work in which I thought I could render best service to the commission. I make this explanation in order that no surprise may be felt if I should be asked questions concerning specific rates and not be able to answer them.

Looking at the questions involved in this bill, and which have led up to the proposal for legislation, I have mastered just enough of the detail to illustrate those principles to my own satisfaction, and I sincerely hope that I have been able to make myself clear to others. As I proceed I shall use my best endeavor to make every point that I take up clear, and if anyone attempts to improve upon my clearness for the benefit of the Senators or the record, I sincerely hope that he will be more successful in the attempt than my friend Donnelly was the other day when he attempted to clarify the atmosphere for the benefit of Senator Pomerene.

I have no manuscript here. Mr. Chairman, and therefore I am not able to time myself with any degree of precision, but I will say to you that I will pass along over the various points that seem to me to be material and get through as speedily as I can, not continuing my discussion of the matter one moment after I have said what I deem it necessary to say.

It can not have escaped attention that in the main the showing made at this hearing is based upon the intermountain-rate situation.

and for an exceedingly good reason. The long-and-short-haul clause in the fourth section of the interstate-commerce law lay at the foundation of all those intermountain cases. It was the violation of that principle, primarily, which led to the bringing of the Spokane, the Reno, the Salt Lake, and Phoenix cases, which collectively constitute the intermountain-rate cases. Primarily, I say, the objection of the intermountain country was to the discrimination against that section in favor of the coast region.

When the first complaint was prepared in the Reno case I prepared it myself, and I rested the case solidly upon the discriminatory feature which existed in the rate. I assumed that if a certain rate was reasonable at San Francisco that a rate 50 or 60 or 70 per cent higher at some Nevada point, where the haul was shorter and the expense a great deal less, must necessarily be excessive. However, after that first complaint was filed—and I was then inexperienced in that line of work—I examined the authorities a little further and found that I could not safely stand upon that proposition because the railroad would at once come into court or come before the commission and claim that the conditions were dissimilar, and therefore the differentials were justified under the law. So I amended that complaint and embodied a specific averment that the rates charged Nevada points were excessive per se, unreasonable, and against the law. So that the question of reasonableness of rates was squarely in issue in the Reno case. I think that the question of the reasonableness of the rates was also introduced in the Spokane case, because we know that the rates upon several hundred commodities were reduced at Spokane, and reduced by specific figures, and that it only had been so by finding that the rates were excessive, and if there had been no averment to that effect it would not have been at issue before the commission.

The Nevada commission not only alleged that the rates to Nevada points were excessive, but, as we believe, proved that they were excessive with mathematical certainty. When we brought that proceeding before the Interstate Commerce Commission we were, of course, immediately confronted by the provisions of the interstate commerce law, and, while we claimed that the rates were excessive per se, we also claimed that they were discriminatory and that we had a good cause of action under both heads.

A word further with regard to the intermountain cases. The proponents of this bill have relied very largely upon those cases, because they go to the very essence of the question and the principle which is involved in this bill and because the subsequent action of the Interstate Commerce Commission was so broad and so sweeping that it became a matter of national concern.

I say this because the impression might prevail with some members of the committee that the intermountain rate cases were purely local in their character. That is not so, as I shall show you later on, because the orders of the commission itself were broadly national in character.

There are four sections of the interstate commerce law which have some bearing upon the questions which are involved in this bill, and upon the question of whether a long-and-short-haul law, absolute and rigid, within the terms of this statute, the shorter being included within the longer, upon the same line in the same

direction, should be enacted into law. Section 1 of the interstate commerce law provides that all rates shall be just and reasonable. I take it that no rate can be just and reasonable if discriminatory, but in dealing with that section the commission and the courts have generally restricted the meaning of the words "just and reasonable" to the mere rate per se, and if the rate as charged expressed in terms of money was none too high for the service rendered, then it was looked upon as a just and reasonable rate within the meaning of that section. But sections 2 and 3, as stated by Commissioner Clark this morning in his admirable address, go directly to the matter of discrimination in a different form, such as rebates, the granting of special privileges, etc. Most of these discriminations had been to a very great extent remedied by the action of the Interstate Commerce Commission in various cases which they considered, but there was one form of discrimination that had been so prominent, that had been so extensively practiced, and which had been the subject of so much abuse and complaint that it was deemed advisable and necessary to mention it specifically. That was the case where a carrier charged a higher rate for a shorter than for a longer haul over the same line in the same direction, the shorter being included within the longer.

In the interest of brevity, whenever I mention the long-and-short-haul clause I want to be understood as using it within the formula of the statute. We had a fourth section which prohibited a higher charge for a shorter than for a longer haul under like circumstances and conditions. As has been shown here, as the law then stood, the carriers were allowed to take the initiative and determine for themselves that the circumstances were dissimilar and apply a higher rate for the shorter haul than for the longer, and when their action was challenged they defended it on the ground that the conditions were dissimilar and the statute had not been violated. These contentions of the carrier had been quite generally, in fact always, sustained by the courts, and they had been sustained for the reason that the complainants, as I did at the commencement of the Reno case, relied solely upon the question of discrimination and never went into the question of the reasonableness of the rate. So the statute was amended. At the time of its amendment there was a strong movement in favor of an absolute long-and-short-haul law. I do not understand the sentiment of Congress as Mr. Commissioner Clark seems to have understood it. My understanding was that the sentiment in Congress was very strongly in favor of an ironclad rule upon the subject, but in some quarters there were lingering doubts as to whether a law of that kind would be constitutional, and they finally compromised by enacting the law in its present form.

I have been informed by those who are familiar with that legislation that the champions of the ironclad rule yielded to persuasion upon this point and with the understanding that the exceptions and exemptions would be so few and so far between and upon so small a scale that the Interstate Commerce Commission could be safely left to deal with them. Now, there are a great many cases of that kind. Commissioner Clark spoke of cases in the East. I presume the violations are numerous in the East, but the conditions in the East are altogether different from the conditions in the West, and I take it—and I think I am right in so taking it—that where

those violations occurred they occurred in cases where the hauls, generally speaking, were short, where the differential is not great, and where the injury inflicted upon those who are required to pay the higher charge for the shorter haul may be considered de minimus—so small that it makes very little difference in the general business of the community wherein they live, and they scarcely feel the additional burden. In our western country—which nobody knows better than yourself, Mr. Chairman—there is a vast extent of territory.

The hauls are enormous in length, the freight charges, of course, amount to huge figures, and the differentials to which we have been subjected in that portion of the country have been on a tremendously high scale. As an illustration I may say that when the Reno case was brought, the closest and most careful calculation that we could make in our office was to the effect that the average differential against a Nevada point upon the main line of the Central Pacific Railroad was 73 per cent in favor of the coast cities. That was figured out by Prof. Thurtell, who is now employed by the Interstate Commerce Commission as attorney-examiner and one of the best mathematicians in the whole country. That simply means this: That an article which was charged \$1 for delivery at San Francisco was charged \$1.73 for delivery at the average of the Nevada points. And it must be understood that what is called the Reno case is not distinctively a Reno case. We broadened it out and we made it a Nevada case and we demanded terminal rates for all the various points in Nevada—for all points, I may say, in the State of Nevada. In that way the question of the reasonableness of the rates was brought into the case. We said that to whatever extent we were being charged above the San Francisco or Sacramento rates, or the coast rates in general, to just that extent, at least that extent, our rates were excessive, and we claimed that if the rates in Nevada were reduced to the level of the coast rates they would be amply compensatory for the service rendered.

Now, if that does not bring the question of reasonableness into a case I do not know what would. Not only did we bring that question into the case, not only did we raise the question of the reasonableness, not only did we complain that the rates charged us were excessive, but, Mr. Chairman, we proved it. We proved it again by the evidence of Prof. Thurtell. What I say may involve some little repetition of what I said at San Francisco, but I can not make this statement connected without touching those points by way of emphasis, and I take it, further, that this record will be read by all the members of the committee while perhaps what I said in San Francisco may not be, but I will not repeat any more than I have to in order to be clear and to give emphasis to my statement.

It occurred to me, as the attorney having the matter in charge, that while it might be true, as claimed by the railroads, that the rates to the coast terminals were compelled by water competition and not fully compensatory, those same rates applying to Nevada points might be amply compensatory because of the shorter haul and the great saving in transportation charges. Therefore, I asked Prof. Thurtell if he could take the entire mass of westbound traffic moving over the line of the Central Pacific and assume that that traffic was

laid down at Reno and charged the terminal rate and find out what return it would give to the company upon the value of the property engaged in the haul. He said he thought he could. I asked Mr. Shaughnessy—he being a practical railroad man—if he could gather data which would show something of the saving effected by not hauling the freight over the mountains. To do this it was necessary to ascertain the cost per ton per mile for hauling the freight from Ogden to Reno, and then the cost per ton per mile, as nearly as might be, for hauling it from Reno over the mountains to California.

Mr. SHAUGHNESSY. You mean the Sierra Nevada Mountains?

Mr. BARTINE. Yes; over the Sierra Nevada Mountains into California. Both of those gentlemen did their work most admirably. To some little extent they had to cover the same ground. Mr. Shaughnessy prepared a most elaborate statement which showed—well, so conclusively that its correctness has never been challenged—that upon an average it cost at least twice as much per ton per mile to haul freight from Reno to Sacramento as it did to haul the same freight from Ogden to Reno, and this testimony by Mr. Shaughnessy was supplemented in a most remarkable way. When the case came on for hearing first in Reno, in the course of his testimony Mr. Luce, the principal railroad witness, introduced an exhibit showing that the haul from Sacramento to Reno, a distance of 154 miles, was equal to 446 on a level. So that, taking Mr. Shaughnessy's statement, which dealt with westbound freight, and coupling it with the railroad exhibit, which dealt with the eastbound freight, we could scarcely reach any other conclusion than that the average cost over the mountains was two and a half times as great as the average cost on the level. Now, all of that tremendously expensive haul was saved when the freight was left at Reno, and a great deal more mileage was saved when the freight was left at Winnemucka, which is 170 miles east of Reno, and still more was saved when the freight was left at Elko, about 315 miles east of Reno. Elko is only 226 miles west of Ogden, and yet the charge at Elko by the Southern Pacific Co. for hauling the freight 226 miles was equivalent to what they charged for about 1,200 miles farther on, making due allowance for the difference between the mountain mileage and the level mileage, dealing with the mountain mileage from the equated basis of $2\frac{1}{2}$ to 1. It is a very remarkable thing to illustrate in figures. The rate on first-class goods, when we began the Reno case, to the coast terminals was \$3 per hundred. The rate at Nevada points was that \$3 plus the local charge back from the nearest terminal, which at that time was Sacramento. That was \$1.29. The local charge from Reno back to Winnemucka was \$1.62 and a fraction. The local charge from Sacramento back to Elko, more than 500 miles, was \$1.72 and a fraction.

So we were confronted by this anomaly, that the shorter the haul made by the Southern Pacific Co. the higher was the charge for hauling the freight to Elko, a distance of 226 miles. The charge was just the same as if it had been hauled 769 miles to San Francisco and then from Sacramento, 90 miles east of San Francisco, back to Elko.

Now, that was the transportation situation which confronted us at that time. We had a number of hearings in the Reno case—

The CHAIRMAN. About what year was that?

Mr. BARTINE. That was in 1908. I will go back just a little. Pardon me if I interrupt the course of my statement, because I can

not carry these things around in my head with accuracy. Mr. Campbell was right when he stated that Spokane was the pioneer in this case. The first Spokane case, in which no final order has been rendered to this day, was begun in 1906. The Reno case was begun in the summer of 1908. The Salt Lake and Phoenix cases were begun just about the same time as the Reno case was—I am not sure as to exactly how they stand in the matter of precedence—but after the first Reno hearing, which was early in the spring of 1909, these four cases were tried together, and by mutual agreement testimony introduced in all four of them was used with regard to each one, in so far as it was applicable, and it was nearly all applicable. In the first Reno case an order was entered which dealt simply and solely with class rates. That order provided that from the Missouri River country to Reno and other Nevada points the rate should be no higher than to the coast; that from Chicago to intermountain points in Nevada—that was our case—there might be a 7 per cent differential against the intermountain country. From Pittsburgh the differential might be 15 per cent and from New York 25 per cent, and there was a similar order in the Spokane case, was there not, Mr. Campbell?

Mr. SHAUGHNESSY. You are referring to the first fourth section order now?

Mr. BARTINE. No; I am referring to the Reno case proper—the order made by Franklin K. Lane with reference to class rates.

Mr. SHAUGHNESSY. No; you are mistaken. That percentage applies to the first fourth section case, in which Hon. Franklin K. Lane wrote the order.

Mr. BARTINE. Well, I would like to correct that statement. I thank you for the suggestion. The class rate proper provided for a rate, I think, of \$2.10 per hundred from the Missouri River country to Reno, did it not?

Mr. SHAUGHNESSY. Yes.

Mr. BARTINE. \$2.90 from Chicago to Reno, which was 10 cents less than the terminal; \$3.15 from the Pittsburgh-Buffalo line; and \$3.25 from New York. Now I have it right; I am sure I am stating it correctly now.

Mr. SHAUGHNESSY. It is already in the record.

Mr. BARTINE. Yes. I am simply stating it for the purpose of showing that in the matter of class rates we did receive concessions that seemed very near placing us on a terminal base, and those reductions were made upon the basis of the testimony introduced in the Reno case, showing that the rates at Nevada points were excessive per se.

I did not quite complete my statement with regard to Prof. Thurtell's testimony, and what it showed with regard to the working of the terminal rates to Nevada points. It is exceedingly interesting. He did his work very carefully and methodically as he always does, and found that taking the very highest valuation that had ever been attached to the Central Pacific Railroad, which was the amount of money that had gone into it altogether—\$216,000,000, an average of \$146,000 per mile—the terminal rate applied at Reno would leave the Central Pacific Co. about 7½ cents per mile. But everybody knows that that is not a fair basis of valuation. The Central Pacific Railroad was built in the greenback time, when the average dollar was not worth much more than .70 cents in gold, but it counted the

same in the record as if it had been gold. So he took \$100,000 a mile as a fair reproduction value of that property and he found that the terminal rates applied at Reno would leave the company 10 $\frac{3}{4}$ per cent net return. Then he took a valuation of \$80,000 per mile and found it would leave a net return of 13 $\frac{3}{4}$ per cent at the town of Reno.

The valuation of \$80,000 per mile was by far the nearest of all valuations that he treated, because later on our own engineers found that the entire track of the Central Pacific road could be reproduced for \$72,000 a mile.

The CHAIRMAN. Was that report of Mr. Thurtell printed?

Mr. BARTINE. Oh, yes; it is in the form of an exhibit, and I can get it for you. I thought I had it with me, but I find that I have not.

The CHAIRMAN. I would like you to get it, and such part of it as relates to what you are now saying please put into the record.

Mr. BARTINE. I will do so. The exhibit covers more ground than that, but that portion can be furnished.

The CHAIRMAN. I understand that these calculations that you have referred to were based on the entire volume of traffic moving over the Central Pacific.

Mr. BARTINE. Yes; he took the entire volume of traffic moving over the Central Pacific and assumed that it was left off at the town of Reno for the purpose of showing what return it would yield to the company. The purpose was to show that even if these rates at coast terminals, with the additional expense of hauling freight over the mountains, might not be compensatory they were compensatory at Reno. The \$80,000 per mile was taken very largely from figures given by Mr. Kruttschnitt in Salt Lake City, in which he estimated that the Union Pacific could be reproduced for from \$75,000 to \$80,000 a mile, and in reaching his figures he took in three hundred and twenty-odd miles of the Central Pacific Railroad in order to make his estimate, and it corresponded pretty closely with the figures of our own engineer.

Now, with regard to those figures, Mr. Chairman, I want to say this: Instead of ever having been broken down by railroad people, they have never even been challenged. They stand as the proof of record in the Reno case, absolutely uncontradicted. So conclusive were they in the minds of the railroad people that in their first brief they practically admitted their correctness and fell back upon the proposition that you can not determine the reasonableness of rates by mathematical calculation. They always succeeded in doing that though, Mr. Chairman, whenever the figures happened to be against them. They immediately raised the cry that they are not getting revenue enough and they must have higher rates.

These intermountain cases ran their course for about two years and some orders were made. The class rate order was made, and some orders were made respecting particular commodities, 500 or 600, I think, at Spokane; 100 or so at Reno, but before they were finally disposed of the fourth section was amended, as has been described here, and almost immediately all of the railroads reaching the Pacific coast and some of their eastern connections, making some 13 or 14 in all, filed petitions with the Interstate Commerce Commission under the fourth section asking to be excepted from the operation of the rigid rule of the law. Those are what are popularly known as the fourth section cases.

When the hearing of those cases came on the Interstate Commerce Commission took the four intermountain cases which had not been finally and definitely settled, bunched them in with these fourth section applications and treated them altogether. The evidence that had been introduced in the Reno, Spokane, Phoenix, and Salt Lake cases was all made evidence in the fourth section applications to be considered for whatever it was worth. A two-weeks hearing took place and the whole matter was argued and finally this order, 124, that has been so much discussed, was made, and that is the order in which the percentage ratio was applied. Now I am getting my bearings a little bit better. The intermountain country was given through rates from the Missouri River, 7 per cent higher from Chicago, 15 per cent higher from Pittsburgh, and 25 per cent from New York. It was a tremendous cut in the differential against the intermountain country, provided the rate at the coast points remained the same. But you will see it did not reduce the rates per se at all; it did not deal with a specific rate. It simply established a relation of rates, and it is for that reason that the claim has been so frequently made that we have received no reduction of rates under the operation of the amended fourth section. That order was contested by the railroads in the Commerce Court. They did not dare to go into court and claim that they had not received the amount of reduction they had asked for, because to whatever extent the Interstate Commerce Commission refused to give them the full measure of relief which they asked for the order was negative; so they appealed to the court on purely technical grounds. They claimed first that the law was unconstitutional, and secondly that the Interstate Commerce Commission had exceeded its authority by establishing a relation of rates instead of establishing a reasonable rate per se. The Commerce Court upheld the constitutionality of the law, but decided that the Interstate Commerce Commission had exceeded its authority in not fixing reasonable rates but simply establishing a relation of rates.

Now, there comes one of the most remarkable features connected with those cases, and it is one upon which I have criticized the Interstate Commerce Commission, but I have done it without any rancor, without anything of personality. I criticized it just the same as I would criticize a court decision which was rendered against me and upon which I found it necessary to take an appeal. I have claimed that the Interstate Commerce Commission erred in dealing with all of those cases. I have claimed that the commission erred in lumping all of those cases together and making an order which practically covered the whole American continent and calling it special. I have claimed that the commission erred in taking an appeal to the Supreme Court from the decision of the Commerce Court. When the Commerce Court held that the order, 124, was void, for the reason which I have given—that it established a relation of rates—there was literally nothing standing between the railroads and the rigid long-and-short-haul rule of the law. I think the Interstate Commerce Commission should have said, "Very well; we think we will take you at your word; we will hold the order as made is void and put the law into effect." That is the course which I think the Interstate Commerce Commission should have pursued. Instead of that the commission appealed to the Supreme Court of the United States, and we have the anomalous spectacle presented of the Interstate

Commerce Commission endeavoring to uphold the only law that gave to the railroads any exemption whatever from the fourth section and the railroads fighting that order. I do not think that in the whole course of my legal experience I have ever observed such an anomaly before. Mark you, there was no question of law involved that made it necessary for the Interstate Commerce Commission to appeal that case. The Commerce Court itself had upheld the constitutionality of the law, and only decided against the commission upon the minor point—that it had exceeded its authority under the law by establishing the relation of rates, to which I have referred.

I have spoken of the general and sweeping character of these intermountain cases, which has given to them a national significance, and which, as we view it, has made such legislation as you propose by this bill an imperative necessity. To show you how general and sweeping it was, let me read a brief extract from Justice White's opinion in deciding the appeal to which I have been addressing myself. It begins in 234 United States, page 476. The Chief Justice says:

We shall seek to confine our statement to matters which are essential to the decision of the case. The provision of section 4 of the act to regulate commerce dealing with what is known as the long-and-short-haul clause, the power of the carriers, because of dissimilarity of circumstances and conditions, to deviate from the exactions of such clause and the authority of the Interstate Commerce Commission in relation to such subjects, were materially amended by the act of June 18, 1910, chapter 309. (36 Stat. L., p. 547.) Following the form prescribed by the commission, after the amendment in question the 17 carriers who were appellees on this record made to the Interstate Commerce Commission their "application for relief from provisions of fourth section of amended commerce act in connection with the following tariffs." The tariffs annexed to the applications cover the whole territory from the Atlantic seaboard to the Pacific coast and the Gulf of Mexico, including all interior points and embracing practically the entire country. and the petition asked the Interstate Commerce Commission for authority to continue all rates shown on the tariffs from the Atlantic seaboard to the Pacific coast and from the Pacific coast to the Atlantic seaboard, and to and from interior points, lower than rates concurrently, in effect from and to intermediate points.

You will see it would have been almost impossible to make an order any more general and sweeping and comprehensive than that was, and yet the statute, *ex industria*, limits the commission's authority to give any relief in special cases.

If taking the cases of 17 different carriers, no two of which were situated alike, and lumping them together and treating them as if they were one, and making an order which applies to them all alike, making the same rate for one and all, and giving that order such scope that, as Chief Justice White says, it covers the whole United States, is a special order, I would really like to know what constitutes a general order under the law. Such an interpretation as that wipes out all difference between the word "special" and the word "general." It makes the word "special" a nullity. It gives the statute exactly the same interpretation as if the word were not there, and you are bound to consider that when Congress inserted the word "special" it meant special; it meant something, that is sure, and it did not mean that the commission by a single order could practically take the whole United States out from under the operation of that statute, because, you see, if they could deal with it in this way, taking 17 carriers, they could have taken 117 just as well, and they could have taken them running in every direction in

the United States just as well and by one general order made that entire law a dead letter in so far as limitation is concerned.

I think it is scarcely to be wondered at, Mr. Chairman, that the people of the intermountain country have felt themselves called upon to mildly criticize the ruling of the Interstate Commerce Commission in this proceeding heretofore, and let me remind you, in this connection, that this involves no discrediting of the commission. I have no doubt that they acted in the best of faith. It is a strong, able body of men, and I would not for a moment impugn their integrity. They have done an immense amount of good work and rendered a vast number of very valuable decisions, and have given a great deal of assistance in straightening out the complex rate situation throughout the United States. But we can not help feeling that they have erred, and erred seriously, in dealing with the amended fourth section. It is my opinion that that section was intended to bring us just as near an ironclad long-and-short-haul principle of rate making as it was possible to do it without infringing the Constitution.

The reason given for this violation of the long-and-short-haul clause, with which we are so familiar, is the alleged water competition at coast points, which competition does not exist at the interior points, and again I say that in my judgment the commission very seriously erred in directing its attention almost entirely to the question of water competition and ignoring every other element which might have a bearing upon the case. Our friends from the coast and our railroad friends here in opposition to the bill have repeatedly declared that every locality is entitled to the benefit of its geographical location. That is sound in principle. I fully agree with it. The trouble is that they confine it entirely in its application to the coast cities. Now, if the coast cities are entitled to the benefit of their geographical location upon the water, which they undoubtedly are, then the interior cities and towns and communities are entitled to the benefit of their geographical location, which is anywhere from 250 to 800 miles nearer to the source of supply, with correspondingly shorter hauls in the transportation of goods to those points.

But, as I say, it seems that this question of benefit of the geographical location is confined exclusively to places that are located upon deep water. I have never considered that the water competition here was the true reason for the application of these excess rates at the higher interior points. In the first place, the evidence shows conclusively that all the excess charge was absorbed by the final carrier. Perhaps I am not using the right word when I say "absorbed." It was an arbitrary imposed by the final carrier, and one with which the other carriers had nothing whatever to do.

I submit that if there is water competition at the coast which compels lower rates at those points, and justifies higher rates at interior points, that is a condition that affects all the carriers engaged in that haul. It affects the Union Pacific, the same as it does the Central Pacific; it affects the Chicago & North Western, the Lake Shore & Michigan Southern, and the New York Central, which were the roads which we brought into our complaint to make transcontinental lines of them. I never thought it should be done, but we were virtually compelled to do it in order to get a hearing.

Mr. SHAUGHNESSY. Compelled by whom?

Mr. BARTINE. Well, now, I do not care to mention names, but it came to us direct from those high in authority in the Interstate Commerce Commission that the commission was determined to consider it as a transcontinental proposition, and in order to make sure of our footing and have the friendly consideration of the Interstate Commerce Commission, the complaint was amended or changed from its original form, and the whole line of transcontinental carriers was brought in. At first I brought suit against the Southern Pacific Co., because that was the only company that was doing us harm, and I had always been taught to believe that it was not necessary to make defendants of those having no interest in the subject matter, but the Interstate Commerce Commission insisted on treating it as a transcontinental proposition.

The CHAIRMAN. Are you going to follow that up, Mr. Bartine? I am quite interested in that proposition.

Mr. BARTINE. Yes, sir; I am. I was going not only to follow it up, but to prove what I say. You will find this also very interesting to you. I am going to read to you from one of my latest briefs.

I had brought out the fact that this excess charge of which we were complaining went into the coffers of the Southern Pacific Co. and would not affect any of the other roads. Mr. Durbrow, attorney for the Southern Pacific Co., was arguing his side of the case. During the course of his argument, Mr. Commissioner Clark interrupted him, and the following colloquy ensued:

Commissioner CLARK. I want to ask you right there about that division. Is the statement made this morning correct that the earnings of the carriers east of Ogden on a shipment to Sacramento are exactly the same as on the same shipment at Reno?

Mr. DURBROW. Exactly.

Commissioner CLARK. The rate to Sacramento being \$3 and the rate to Reno being \$4.29?

Mr. DURBROW. Precisely, and the reason is that the Southern Pacific Co., because of its strategic position, has been able to compel the carriers to accept that division. If they did not do so they could withdraw from this transcontinental business, which would yield them but a very small revenue, from Ogden and San Francisco, and permit the shipments to come into San Francisco by the sea and local them out, getting the full charge, or they have a competitive line of their own from New York to San Francisco via the Sunset Gulf Route, which has a direct bearing upon that division, and it is because of that that the Southern Pacific can dictate this division.

I will break in upon the quotation for a minute to say that what he meant by the strong strategic position of the company was that it had the Sunset Route, which was partly a water route.

Commissioner CLARK. Then the division that the Southern Pacific Co. gets from the revenue west of the Missouri River is 46 per cent of the terminal rate?

Mr. DURBROW. Forty-six per cent of the terminal rates when the business—

Commissioner CLARK. And, of course, whatever adds back?

Mr. DURBROW. Yes; that is precisely the point.

Mr. JONES. No; it is 46 per cent of the Missouri River proportion.

Mr. DURBROW. Forty-six per cent of the Missouri River proportion of the through rate, I assume.

Commissioner CLARK. That is what I said, 46 per cent of the proportion west of the Missouri River on the transcontinental rate.

Mr. JONES. No; you said 46 per cent of the terminal rate, which is not correct.

That colloquy occurs in the transcript of docket No. 1665, Railroad Commission of Nevada *v.* the Southern Pacific Railway Co. et al., at Reno, Nev., October 26, 1909, at pages 619 to 621.

Now, I go on:

In the foregoing colloquy the reference to the division of the rate is somewhat misleading in that it implies that the division is of a \$4.29 rate—the rate to Reno on first-class commodities. In truth and in fact the division is confined to the \$3 transcontinental rate, the \$1.29 being an arbitrary being imposed by the final carrier alone, and in no way considered in the division. This was very clearly shown by the following colloquy previously quoted in these proceedings between the chairman and the counsel of the Nevada Commission and Mr. Luce, general freight agent of the Southern Pacific Co.:

Mr. BARTINE. In making a through rate to the coast terminals, how do you do it?

Mr. LUCE. From the Atlantic coast?

Mr. BARTINE. Yes; take Chicago for an example.

Mr. LUCE. The measure of the rate is the water from the Atlantic coast, the rate is made from the Atlantic coast to the terminal, and then—

Mr. BARTINE. I know, but you do not understand me. One road does not do it alone?

Mr. LUCE. We have connections.

Mr. BARTINE. How do you do that? Do you negotiate with other roads?

Mr. LUCE. Our connections and us get together; we confer.

Mr. BARTINE. And you agree upon the proportion which each road shall have, do you not?

Mr. LUCE. Yes, sir; the connection line.

Mr. BARTINE. Take the case of first-class freight, just for illustration. We have already shown that the principle was the same whether first-class or commodity rate; you have a rate of \$3 as the through rate from Chicago to Sacramento. Now, the different roads engaged in that haul all have their full rates; they each agree to take so much of it?

Mr. LUCE. Yes, sir.

Mr. BARTINE. That is the arrangement which you have?

Mr. LUCE. Yes, sir; naturally.

The CHAIRMAN. Who is Mr. Luce?

Mr. BARTINE. He was general freight agent of the Southern Pacific Co. and their principal witness.

The CHAIRMAN. What was the date?

Mr. BARTINE. Nineteen hundred and nine; the first hearing of the Reno case.

The CHAIRMAN. Where was it held?

Mr. BARTINE. In Reno.

The CHAIRMAN. Before whom?

Mr. BARTINE. Before Mr. Lyon. I think Mr. Lyon will remember some of this.

Now, to continue quoting:

Mr. BARTINE. Now, the through rate to Sacramento from Chicago is \$3 and the rate to Reno is \$4.29. What arrangement have you with the other roads with respect to the \$1.29?

Mr. LUCE. We have not any arrangement with them.

Mr. BARTINE. You have not any arrangement with them?

Mr. LUCE. No, sir.

Mr. BARTINE. Does that \$1.29 appear in your tariff schedules?

Mr. LUCE. Yes; by reference to the tariffs in which it is published.

Mr. BARTINE. It is not in the regular transcontinental schedules, is it?

Mr. LUCE. No. I will say we secured from the commission special dispensation or ruling so that we could by reference consider that the factors of that tariff in that because if we had placed all those local rates from Sacramento it would have made a tariff so voluminous—

Mr. BARTINE. I am simply trying to bring out the manner in which it was done. It appears, though, in your schedules by reference?

Mr. LUCE. Yes.

Mr. BARTINE. Can you say of your own knowledge whether there is any reference to that \$1.29 in the tariff schedules of the Union Pacific?

Mr. LUCE. They are a party to the tariff; yes, sir.

Mr. BARTINE. They are a party to the \$1.29 portion of it?

Mr. LUCE. They are a party to the transcontinental tariff which bears reference to this local rate.

Mr. BARTINE. What reference does it bear to this local rate?

Mr. LUCE. The statement is that the rate to intermediate points will be the terminal rate to the nearest terminal plus the local back.

Mr. BARTINE. The Union Pacific receives a portion of this \$3, does it not?

Mr. LUCE. Yes.

Mr. BARTINE. Does it receive any portion of the \$1.29?

Mr. LUCE. No.

Mr. BARTINE. That goes entirely to your company?

Mr. LUCE. Yes.

The CHAIRMAN. What was his company?

Mr. BARTINE. His company was the Southern Pacific. We were dealing more particularly with the Central Pacific lines of the company, that is, the main trunk line of the company. It runs from Ogden to San Francisco.

That is a clear and specific statement with regard to this excess charge, that they had no agreement or arrangement then with their connecting lines. It shows it was purely an arbitrary act. How can there be a division between two carriers when there is no agreement or arrangement or understanding between them?

I want to call your attention to what Commissioner Lane said with respect to this tariff.

The CHAIRMAN. Let me get a better understanding of the matter before you proceed, Mr. Bartine. Does that mean, presuming the shipment took the route you said, where you made the parties defendant in your case the New York Central, the Lake Shore & Michigan Southern, the Chicago & Northwestern, and the Union Pacific, that those companies only got part of the terminal rate?

Mr. BARTINE. Of the \$3.

The CHAIRMAN. And no part of the—

Mr. BARTINE. No part of the excess—of the \$1.29. That was a pure arbitrary.

I have illustrated it this way, and if you will permit me, I will do it again. It is exactly the same in principle as if you bought a through ticket as a passenger from New York to San Francisco. You got to Reno and then you concluded you would like to get off and stay. The conductor then told you you could not get off and do that unless you paid \$10 or \$15 extra for the privilege of doing so. In that case it is obvious that the Southern Pacific's cocarriers would have nothing to do with the \$15, unless it was divided with them. It was purely an arbitrary act of the final carrier.

To make it still clearer, it comes about in this way: In the first instance, this freight was actually carried across the mountains and then back. That went on for a number of years. Just how long we do not know. The records were lost upon that point, and we do not know exactly when that custom was stopped. The people in the intermediate towns complained of the great loss of time thus occasioned. The freight might not come back for a month or six weeks, while they were impatiently waiting for the goods. So, as a matter of concession, the Southern Pacific allowed the goods to be left off at the interior points, but it charged the same as if they were taken over the mountains and brought back. It did not change the nature of the charge. It was distinctly a local charge, the only difference being that in the one case the company would have done

the work and earned the money, while in the other case it took the money without earning it.

The correctness of our position upon this point is further shown by a statement contained in a report of the commission in case No. 1665, submitted February 7, 1909, decided June 6, 1910. I quote from page 242. That is the case that I have referred to.

It was decided by Commissioner Lane. It reduced the class rates. I shall now quote from the opinion:

To ascertain the rate on a shipment from New York to Reno one looks in vain for any one tariff in which such rate is to be found. By examination of the tariff on the Transcontinental Freight Bureau, to which the Southern Pacific Co. is a party, this note is discovered:

"Rates to intermediate points.—When no specific rate is named to an intermediate point shown in Transcontinental Freight Bureau Circular No. 16-C (I. C. C. No. 864), supplements thereto or reissues thereof, rate to such an intermediate point will be made by adding to the rate shown to the point designated herein as 'terminal,' which is nearest the destination of shipment, the local rate from nearest terminal point to destination."

Turning to Transcontinental Freight Bureau Circular No. 16-C (the issue at the date at which this complaint was brought) we find Reno named as an intermediate point, and that the nearest terminal to Reno is Sacramento, 154 miles west of Reno. We find, then, by returning to the Transcontinental Freight Bureau Westbound Tariff, the rate applicable upon the shipment to Sacramento. Then, having ascertained this from a tariff to which all of the carriers from New York to Sacramento are parties, we must next find the local rate from Sacramento to the destination of the freight, which is east of Sacramento. This local rate, Sacramento to Reno, we find in the tariff to which the Southern Pacific Co. alone is a party. Thus we have, through a maze of tariffs, at length discovered the rate from New York to Reno, which is made up of a joint through rate to Sacramento and the local rate of the Southern Pacific Co. alone from Sacramento back to Reno.

I have read that to you to illustrate the situation and emphasize the position which we have taken all the time, that the commission erred in forcing us to treat the grievances that we complained of as a transcontinental proposition when only one of the carriers had anything in the world to do with it.

I do not think it is worth while for me to say much with regard to complaints or the claim made here that we should not enact legislation of this kind because it would discredit the commission. I very much doubt if the commissioners themselves would view it in that way.

I want to call your attention, Mr. Chairman, to the fact that the amendment of the fourth section which is now upon the statute books was enacted because of general dissatisfaction with the manner in which the courts had construed that section, making it almost impossible for the person discriminated against in that way to obtain anything in the line of relief.

The CHAIRMAN. It resulted not only in dissatisfaction and criticism of the courts, but it resulted in the abolishment of one of them, did it not?

Mr. BARTINE. It did, indeed. There were no people in the United States who were freer and more vigorous in their criticism of the late lamented commerce court than the members of the Interstate Commerce Commission themselves, and if they had a right to criticize the commerce court I presume that other people have a right to criticize the Interstate Commerce Commission, provided that criticism is made in a proper spirit and does not cross proper lines.

I think that at this point I might just as well pay a little attention to what Mr. Commissioner Clark said this morning. It really seemed to me that the commissioner put up a rather perfunctory opposition to this bill, although at the same time I am constrained to say that, in my judgment, there was a great deal more meat in what he said than in almost all the rest that has been said in opposition. But he was exceedingly mild. He defended the action of the commission, and I would not for the world say that the commission has not acted in good faith and according to its best intelligence and all that, but it was very evident from Commissioner Clark's expressions that he is pretty thoroughly wedded to the idea that there should be a departure from the long-and-short-haul clause where it is necessary to enable a carrier to meet competition. In that respect he seems to take substantially the position that the railroad people themselves do, that it is purely a transportation proposition, and that the one and sole thing to be considered is whether a railroad should be permitted to meet competition where it finds it.

The trouble with that line of argumentation is that it leaves completely out of the question the equities of the people who may be injured by allowing roads to meet competition in that way.

Mr. Clark gave an illustration of two railroads. I might just as well notice that here as anywhere else. Upon its face it is about the most cogent one that has been given by anyone at these hearings, but it is by no means unanswerable. We will take two roads as he supposed them to be, just slightly changing the figures, so as to make them simpler. We will suppose that there is a railroad which we will call railroad No. 1, pursuing a circuitous course for a distance of 150 miles. Why does it pursue that winding course or curving course? It does it for the purpose of reaching towns and communities from which it expects and hopes to obtain business. While that road stands alone, of course charges along its line would be measured in a general way by distance. Perhaps they would not be on a strictly mileage basis, but some consideration would be made for increasing distances. The road, for instance, would not think of charging as much for hauling freight 100 miles as for hauling it to the end of the road, a distance of 150 miles. It would consider that it was rendering more service and ought to have more compensation.

Along comes another road, which runs directly across the same as the string of a bow runs across from one end to the other of the bow. This road is only 100 miles long.

Now, it is not likely that that road would be constructed as a strictly independent proposition in competition with one already in existence, unless by running that 100 miles it could pick up considerable traffic. It would be more likely to be a part of a longer road. It comes in and strikes railroad No. 1 at point A and runs straight across to point B. Now, it is obvious that this new road coming in with a shorter line is in a position to carry freight more cheaply from A to B than the first road can. It seems to me it is fair to assume that railroad No. 1 is going to get a great deal more local traffic along its line than the new railroad can, but the insistence is that no matter what it may be earning in general, it must be permitted to earn money along every part of the line. So, as soon as the new railroad establishes a rate somewhat lower than the rate on railroad No. 1, railroad No. 1 puts down its rate at point B, keeping

the rates up at all the other points. Instantly there is a discrimination created all along the line against other patrons of railroad No. 1, the patrons who had been supporting it right along, in the main.

Now, what does railroad No. 2 do? It is in a position to put its rates down lower than No. 1 can, because it is a shorter haul and it can carry goods more cheaply. It puts its rates down there at that point, and then we have a contest between these two roads. When the second railroad puts its rates down at that point without lowering them at other points, there is discrimination created on that road, and the patrons of both roads, except at the terminals, are subject to an unfair and unjust discrimination.

Mr. Clark says that to deprive a railroad of the right to meet competition at that point would not benefit the people living along the line of the railroad. It might or it might not. There might be people on that railroad who would be able to do business if it were not for this condition of affairs, and if they were not cut out from that rate. He says that that competitive point or town would be there anyway, even if railroad No. 1 were cut out from serving it, but it would not be so large a place if served by one railroad as if it had the advantage of two. If the two center in there and concentrate the business at that point, the effect is to build up a large center at that point.

It seems to me that is a good answer to Commissioner Clark's illustration.

Let me say further, on this line, that it is not necessary for the proponents of this bill to prove that never in any instance would a condition be created that would be disadvantageous.

In dealing with legislation of this kind we have got to act along general lines. We must try to do that which will bring the evils to a minimum. It seems to me that all of the cases which Commissioner Clark has in mind, of violations in the East, are minor in consequence, or, rather, minor by comparison.

I venture to say that all the rates put together east of the Missouri River and north of the Ohio River, in which the fourth section is violated, do not, in their magnitude, in the interests affected, and in the effects which they have upon the well-being of the different communities, amount to one-tenth as much as the condition that is involved in these intermountain cases, and the fourth section orders of the Interstate Commerce Commission.

In dealing with a matter of this kind we must deal with large things and not with minutia. You can not, in any case, defend a higher charge for the shorter haul without ignoring the rights of the people who have the shorter haul and who are entitled to the benefits of it.

Now, as a matter of principle, leaving the purely transportation question out of view, I wish to express my opinion upon that point by a very simple illustration.

Railroads are not built simply and solely for the benefit of the railroads; they are constructed for the benefit of the people. The one and sole question of getting revenue is not the only thing that the Interstate Commerce Commission has to look after. The promotion of traffic and the providing for a meeting of competition are not the only things that the commission must look after. It must look after those things in such manner that the people as a whole and the people to be served, and any portion of the patrons of any road, are treated with justice.

When any man can convince me that it is right for a baker to charge more for one loaf of bread than he does for two loaves of the same kind and weight and at the same time and place, then he can convince me that it is right for a railroad to charge more for hauling a ton of freight 100 miles than it does for hauling it 100 miles, and then 100 miles farther on. The very statement of the proposition proves the rank injustice of the system of rate making, and the mere fact that it is going to benefit people and build up commercial centers at the farther point of the line never atones for the injustice that is done.

The tendency of that is to create more terminals. It has done it all over the United States.

The CHAIRMAN. Let me ask you a question on that point and get your view as to the suggestion of Commissioner Clark, that there was no advantage to the railroad companies to make these low rates to the terminals and compensate themselves by a high rate to intermediate points. What is your view as to the advantage or not of the railroads building up large depots and manufacturing industries at the ends of their lines rather than at intermediate points?

Mr. BARTINE. Well, the question, or the proposition, as made by Mr. Commissioner Clark, implies a condition which, if it ever exists, exists very rarely. It rests upon the theory that these railroads were carrying stuff to a farther point at just a little bit more than the out-of-pocket cost. He wants to know why they have to do that.

Mr. Chairman, they have never proved that they carried goods to farther points at just a little bit more than the out-of-pocket cost. Upon that point, let me read you a colloquy that took place. It brings out the point you are now discussing. The railroads do not know how much their terminal charges exceed the out-of-pocket cost, or, if they do, they do not tell us about it. At the Salt Lake hearing I conducted the cross-examination of Mr. Luce, on behalf of the Salt Lake people, because the testimony was to be used in the Reno case. Mr. Luce had made that statement, that the terminal rates were not fairly reasonable and remunerative. He said they paid something above the cost of transportation but nothing like a fair compensation for the service. He had to say that in order to make the rate lawful under the ruling of the court.

I said, "Mr. Luce, how much do your terminal rates exceed the cost of transportation?" His answer was, "I do not know."

"Well," I said, "If you do not know how much they exceed the cost of transportation, how do you know that they exceed the cost of transportation at all?"

"Well," he said, "by my general knowledge and understanding of railroad matters."

A little later on I recurred to this subject. I said, "Mr. Luce, you say that while these rates yield something more than the cost of transportation, they do not yield enough to amount to a full and fair return. Will you please tell us how much they fall short of yielding a full and fair return for the service?"

His answer was, "I do not know."

"Well," I said, "if you do not know how much they fall short, then how do you know that they fall short at all?"

I received the same answer, that he knew it from his general understanding and knowledge of the business of the company. It

was in that connection that the colloquy came in that Mr. McCarthy read the other day in which I asked Mr. Luce if this terminal business was not profitable, and the local business in Nevada was not profitable, where did that company get the money to pay its dividends and the interest on its bonds and carry a surplus. You heard his answer, as read by Mr. McCarthy. But that was not the whole of it. The real significance of the question lay in the fact that Mr. Luce had testified that approximately one-half of the entire west-bound traffic went right through to the terminals, and it seems passing strange that a great railroad company would be carrying one-half of its westbound tonnage at only just a little bit above the cost, or at anything less than a fair and reasonable compensation for the service.

Then he also declares in his testimony that of the freight moving eastward from the Pacific coast terminals, 80 per cent went right through to the Ogden gateway, which was the eastern terminal of the road. He claimed that, also, was unremunerative, and it was in view of the fact that they were carrying about half of their freight to the western terminal at less than a fair compensation, and 80 per cent to an eastern terminal at less than a reasonable compensation, and doing all of the business in Nevada at less than a reasonable compensation, that I asked him where they made the money to pay the dividends, etc.

Senator HENDERSON. What was his answer?

Mr. BARTINE. The answer was the one that Mr. McCarthy read, to the effect that they had to get it somewhere.

Senator HENDERSON. The inference being that it was taken from the interior?

Mr. BARTINE. Now, to go back to the question that you propounded, and I am glad you asked me, because my notes are a little bit scattered here; I am speaking in a rather disjointed way.

The reason why a railroad company will carry freight to the farther distant point at less than it does to the nearer point is undoubtedly sometimes due to circumstances beyond its control. It feels, as the courts have put it and as they claim, that they are getting a little something out of the business, and whatever they get in excess of the outlay is just so much added to their net revenues. The objection to it is this: They will invariably attempt to recoup any loss or profit at that point by putting up their rates at other points where they are in position to do so, just as they have in the intermountain country.

That brings me to the consideration for just a moment of a point that has been adverted to a number of times by the opponents of this bill.

They have claimed here very stoutly that if the railroads are not allowed to meet water competition on the coast they must get out of business at those points, and the interior will have to bear all the expense of sustaining the railroads. Let us see whether that is so or not.

The CHAIRMAN. That seems to be the real basis of the argument; that is the real argument in defense of this system.

Mr. BARTINE. Yes, sir. I am coming right to it.

Let us see by illustration how that would result, and see whether they could throw the burden upon the interior. Let us sup-

pose that they should lose all their profits at the coast. Let us suppose they should lose all of their business on the western half of the Central Pacific road, or that portion west of Reno. It represents, perhaps, one half of the value of the road, because it is very expensive construction. The road is there. It has cost an enormous amount of money. Do you think that they would be permitted to double or treble the rate at the interior in order to compel the sparse population in the interior to pay a return upon that value? If the Interstate Commerce Commission would allow a thing of that kind to be done, that would furnish the best argument in the world for its abolishment. If there is anything that is settled in the law, it is that all rates shall be reasonable. To compel the people on one-half of that line of railroad, and that part having a sparse population, to pay rates that would amount to a fair return upon the entire road is so absolutely opposed to the principles of natural justice, that I hardly see how any man can propose any such thing.

The CHAIRMAN. I understand that is the practical result under the system you are contending against.

Mr. BARTINE. That is the idea.

The CHAIRMAN. With the exception of the fact that they make a little something over the out-of-pocket cost on the coast business, but with that exception of this small profit over and above the out-of-pocket cost, am I right in assuming that, under this system for which the Southern Pacific Road is contending, the sparsely populated part of the country, or, as you say, the poorer part of the country, is made to pay all the dividends and interest of the entire system?

Mr. BARTINE. If their contention is true, that they only get a little bit over the out-of-pocket cost at the terminals, it follows that it must be so, but I do not accept their statements at full face value.

The CHAIRMAN. I do not know whether I will or not. Of course, this is not a court.

Mr. BARTINE. I have reasons for what I say.

The CHAIRMAN. I was assuming it for the sake of the argument.

Mr. BARTINE. I will say this, that the portion of the intermountain country that is served by the Central Pacific is very sparsely settled. It is doubtful if there are more than 50,000 people in the State of Nevada who are directly tributary to that particular line of road. Those east of the Nevada line, in Utah, as far as Ogden, can not be any more numerous than that, so that altogether, from Ogden to the boundary of California, I doubt if there are more than 100,000 people living along that line of road or tributary to that road. To require that sparse population to make good the loss which the road might suffer at the coast terminals would be the rankest kind of injustice, and it is one that no court would sustain. In fact, it is not true that the road is entitled to earn a certain amount upon the value of the investment. That has been laid down as a general rule, but it is subject to the condition that the business situation will justify the earnings. Now, we have had that rule repudiated right in our own State, in the Federal court there. We had, at one time, a maximum rate law upon the statute books. It was a part of the original railroad commission law of Nevada. It prescribed certain rates.

That law was assailed as being unconstitutional. It was said that these maximum rates were confiscatory and therefore unconstitutional. Six roads joined in the attack. The court found that the rates were compensatory on five of the roads and noncompensatory on one. Perhaps I ought to modify that statement a little bit. It found that they were compensatory upon one; that upon four there was no proof going to show that they were not compensatory, and therefore the law was given the benefit of the presumption, and upon one of the roads they were held to be confiscatory. There was one new road, the San Pedro, as it was called. It was then the Salt Lake, Los Angeles & San Pedro Road. It had just been constructed. It was shown in that case that the rates, as fixed, would leave that company just a shading above 4 per cent return, and it was claimed this was confiscatory. Judge Farrington (?) reviewed the situation very fully with regard to the road and directed attention to the fact that it was a new one; that it was running through a sparsely settled country; that its profits were in the future, and that it could not expect the sparse population living along the line of that road to pay such freight rates as would yield a fair return upon the value of the property, even though it was shown that it would trim their profits down to 4 per cent and a small fraction. He held that it was not confiscatory with respect to that road, while under ordinary circumstances he would have held that 6 per cent would be a fair return. I judge that from his decision in other cases.

There was another illustration that Mr. Clark used that I thought I wanted to notice. I shall not attempt to answer everything, because there are things that he said that did not go to the heart of the question.

He referred to the fact that at one time starch was shipped from Iowa. I have referred to that shipment of starch in every argument that I have made before the Interstate Commerce Commission. There were 3,000 tons of that starch, and I believe it was the only shipment that it has ever been suggested has moved from Iowa by water to the Pacific coast. It is obvious, therefore, that there must have been some special reason for it.

The CHAIRMAN. How much further is it from Chicago to the Pacific coast than it is from Iowa to the Pacific coast?

Mr. BARTINE. It is considerably farther. It depends, of course, upon what part of Iowa.

It is perfectly absurd to say that as a general proposition commodities could be shipped by rail fifteen, sixteen, or seventeen hundred miles from Iowa, depending upon the part of the State, of course, by rail to New York, unloaded from the cars and loaded into ships, and then carried five or six thousand miles by ship, unloaded at San Francisco, more cheaply than a haul of not more than sixteen or seventeen hundred miles across. I do not think it is more than 1,600 miles from the heart of Iowa.

Mr. FREEHAVER. I would like to illustrate that point a little. The distance which the steamship lines can reach inland for the traffic is governed by the rate. Take Utah, for illustration, 800 miles inland. It is claimed that the rates are held down by reflected water competition. The first-class rate is \$1.54. They scale down from that. One dollar and fifty-four cents will carry freight from New

York westbound to Grand Island, Nebr., which is 153 miles west of Omaha.

Mr. SHAUGHNESSY. How many miles from New York?

Mr. FREEHAVER. It is 1,600 miles from New York. So that in order to be on the same basis it would have to be shown that freight was carried from Grand Island to the Atlantic seaboard and then taken around by water. The rate measures the distance really which a steamer can go inland for tonnage.

Mr. BARTINE. If you carry the argument of the railroad people to its ultimate conclusion, it lands us pretty nearly upon this proposition, Senator, that freight can be hauled 1,500 miles east, using round numbers, by rail, loaded into ships and carried five or six thousand miles in the ships, more cheaply than it can be shipped 1,500 miles by rail alone without using ships.

Mr. LYON. Doesn't it go further than that, that unless that starch is consumed at the wharf at San Francisco it would have to take a rail haul to the interior?

Mr. BARTINE. Certainly. We have not got through with the situation yet.

The CHAIRMAN. Did you get through with the starch? [Laughter.]

Mr. BARTINE. I presume we did. I do not know where the starch went.

Commissioner Clark did rather mildly suggest that it would not benefit the interior country to deprive the coast cities of lower rates to meet water competition.

The CHAIRMAN. In that connection, I am not sure that I understood him. I understood him to suggest, although he said that all these suggestions as to what might happen were, of course, mere guesses, and that one man's guess was pretty nearly as good as another's, when it comes to unknown conditions, that the absolute enforcement of this prohibition against charging more for the shorter haul than for the longer haul would enlarge and widen the distributing territory of the coast cities, and be of benefit to them.

Mr. BARTINE. Yes, sir.

The CHAIRMAN. Was that his position?

Mr. BARTINE. Why, I did not understand him that way, Senator. The point that I had in mind was that he claimed that we would not be benefited in Nevada; that is, in a business way, because if the railroads did not make these lower rates, the water carriers would get them and bring the goods in. They would be loaded onto cars; they would be sent to Nevada, and they would control the Nevada market just the same as San Francisco does now. That is the way I understood it; that is what I understood him to mean. I was going to meet that proposition, because some of these gentlemen from the coast have said substantially the same thing. Let me make this suggestion in that connection. If the water carriers had full and complete control of the situation in this case, it is fair to assume that they would charge all that they could. Now, they would lay down the freight at San Francisco, and then it would be loaded upon the cars and the railroads themselves would get that business. They would not be deprived of all of that business, even if they lost the west-bound. They would still have the distributing trade. The railroads would get that. They would be moving freight eastward on the

central Pacific and some to Reno. There, it is claimed, that they would control the market.

Now, how does this system work? Freight goes to San Francisco by water. It is loaded on cars and sent eastward for distribution. At a certain point on its journey, it is going to meet a train coming from the East to the West. It would become the object of the rail carriers to get the longest haul they could to supply the Nevada territory, and not content themselves with the comparatively short haul over the mountains. They would naturally reduce the rates from the East in order to meet the rates from the West upon freight which had come into port by water, and at the port was taken over by the rail carriers and carried eastward. There would be a point somewhere in there where trains coming from the East would meet the trains coming from the West, and the interior would have the benefit of that competition. So, it is not fair to suppose that rates would be entirely controlled from the Pacific coast to these cities. It must be remembered that we have got a great network of railroads in this country, and every argument that is made on behalf of water competition as a compelling force and in justification of the high rates at the interior points is based on conditions that existed before we had railroads, and that carries with it the assumption that the same rule should be applied that was applied in years gone by, when freight was carried around Cape Horn and then brought around to the port and distributed by mule team. The people of the United States have built this great railroad system, and all of the people of the United States, and not alone the people of the coast, are entitled to the benefit of that system.

I have expressed myself with some degree of fullness as to the effect that the water competition is not the true reason, giving, first, the enormous quantity of freight that is carried to the coast at what are claimed to be unremunerative rates, and, secondly, that this entire excess charge to which I have referred is an arbitrary by the final carrier.

Now, the plea is that the rates of the coast are forced down by water competition; that the water carriers control the rate. I take issue with them upon that, and their own proof shows that is not true. I am going to read you another extract from Mr. Luce's testimony. This was at Salt Lake City:

Mr. BARTINE. How do you arrange your transcontinental rates? What is your process?

Mr. LUCE. I do not catch the drift of the question.

Mr. BARTINE. On first-class goods, using that simply as an example, you fix a \$3 rate. How do you arrive at the \$3 rate?

Mr. LUCE. That rate has been in for some time.

Mr. BARTINE. But how was it fixed first? Who agreed upon it?

Mr. LUCE. That was a rate made after conference between the lines interested in the haul from New York to San Francisco.

Mr. BARTINE. That is the way your through rates are always made?

Mr. LUCE. By conference; yes, sir.

Mr. BARTINE. Do you take the water carriers into those conferences?

Mr. LUCE. No.

Mr. BARTINE. You make your rates without regard to them?

Mr. LUCE. Yes, sir.

Mr. BARTINE. Then they do what they please in the matter of rates?

Mr. LUCE. Yes.

Mr. BARTINE. Does that look as if you controlled rates, or the water carriers controlled the rates?

Mr. LUCE. Well, I believe the rail lines control the making of their own rates, and when we say to-day that we do not care to go any lower, that indicates our disposition in that regard in making the rates.

Now, there is a pure confession that they make rates wholly regardless of anything that the water carriers may do. They do not take them into conference at all. They make such rates as they think they can afford to make and they let the water carriers come tagging along behind, making rates as they please. It seems to me that the party who takes the initiative is the one who makes the rate, and not the one who follows up.

There is another thing to show that the water carriers do not control the rates. About the year 1909 the railroads reaching the coast made a substantial increase in the coast rates. It was approximately a 10 per cent increase. It was not uniform along the line, but it does not make any difference whether it was 8, 9, or 10 per cent. I asked Mr. Luce about that.

On page 747, in reply to a question as to what the Hawaiian Line did when the railroads raised their rates in January, 1909, Mr. Luce said, "I do not know, except from hearsay, that it advanced some of its rates, but I do not know absolutely, because I have never seen a tariff of theirs, because they never have been published. They are simply based upon our rates, as the basis for theirs."

The American-Hawaiian Steamship Line, which was grinding the life out of their transcontinental tariff, actually came along and based its rates upon the rates of the rail carriers themselves. That is Mr. Luce's testimony, and he was the leading railroad witness.

Mr. SHAUGHNESSY. Mr. Bartine, did you advert to the 10 per cent increase in rates in 1909, when the American-Hawaiian Co. also increased its rates 10 per cent?

Mr. BARTINE. I do not know that I made myself clear upon that point. The fact was that at that time the Hawaiian Steamship Line advanced its rates. One would naturally suppose if it was trying to get business away from the rail carriers it would have retained its old rates, but it did not do that. It raised them in the same ratio that the railroads did. That must have been upon the theory that they were getting all, or substantially all, of the business that they could, and if they raised the rates 10 per cent they would get that much more money.

There is another thing that I might touch on while I am upon this point. I think I will have the time to dwell upon it briefly before we adjourn.

The great competition that the railroad carriers invoke is not competition with other railroads. There is some of it, but in the great majority of cases the railroads meet on more or less even terms. They all pick up business along their lines at various points. They have their local traffic and they have their through traffic. The competition between the rail carriers is not of the same nature; it is not so intense as it is between the rail carriers and the water carriers. At all events, it is the water carriers that the rail carriers have claimed to be especially afraid of.

Mr. Clark and others have adverted to the schedule C order. After order No. 124 had been sustained by the Supreme Court of the United States, very shortly afterwards, the Panama Canal was completed, and it was opened for business on the 15th of August, 1914.

About the 1st of October all the rail carriers reaching the Pacific coast made their application. Before the order went into effect, mark you, these rail carriers reaching the coast petitioned the Interstate Commerce Commission for leave to make substantial reductions in the transcontinental rates upon certain special commodities which were put into what was called schedule C. I do not know just how many of those articles there were. My impression is there were about 250 or 260 of them. The number seems to have been reduced by the estimates of witnesses here, but it does not make any difference about that. It is not a question of the number of articles. It is not so much a question of the number as it is a question of what those articles represented in the matter of tonnage. We ascertained at the time that the articles which were included in schedule C would represent something over 80 per cent of the total tonnage reaching the intermountain country; that is, reaching our State, and I presume it is not dissimilar to other States in that section.

We had a hearing at that time, and the petition of the carriers for leave to reduce rates upon these articles was granted, perhaps not up to the full measure of their request, but very largely granted, and it was done upon the grounds that during the month of September, the first full month that the canal had been in operation, there had been an immense increase of water-borne tonnage from the Atlantic to the Pacific coast. It was some 77,000 tons, I think. Some 77,000 tons were shown to have passed through the canal during that month, and it was alleged that if that percentage, or that proportion, or that tonnage, were maintained for a year, it would amount to practically 1,000,000 tons, whereas previously, for an average of three years, the tonnage had been about 250,000, or a little less. Upon that showing the commission made its order granting, in large part, the relief that was asked for.

I want to call your attention to a little inconsistency in Mr. Clark's statement before you here to-day. He said that the canal had not been in operation long enough for them to get a correct line so as to properly preserve the balance of rates between the rail carriers and the water carriers. The canal operated nearly a year before the slides stopped it, and during that time it did carry approximately 1,000,000 tons of freight. Now, the point I am suggesting is this: The commission was willing to take the tonnage for one single month and grant this concession to the railroads, the effect of which was to lower the rates upon the great bulk of their westbound tonnage and greatly increase the differential between the coast rates and the interior, thereby increasing the discrimination of which we have been complaining. They acted on that on the basis of a single month's tonnage, and yet they admit that the whole year that the canal has been in operation is not a long enough period of time to enable them to make a correct adjustment of rail rates and water rates.

Upon that point, to show you how unsatisfactory the testimony was upon which that concession was made, I want to call your attention to some more testimony—some testimony that was given right there at that hearing. I have it quoted in this brief. I have used it before the commission itself.

This is the testimony of the leading witness, or the best witness, probably. Perhaps I should not say that he was the best witness,

but he was the witness who covered the subject most comprehensively. He was Mr. Hastings, one of the traffic officers of the Santa Fe. He was a very intelligent man, and he gave his testimony with all the fairness that you can expect from a railroad witness. In that I do not mean to impugn the honesty or integrity of the railroad officials, but it is the plainest kind of common sense to say that these people are not brought before the Interstate Commerce Commission to give testimony that is damaging to their employers. Generally speaking, it is the hardest thing in the world to get anything definite out of them, except what they want to present.

Mr. Hastings presented figures on the increased water tonnage. Senator, you will see at a glance, and you will fully agree with me, that if water competition is an element which should fairly be considered in determining the question of whether the roads should be permitted to lower rates to meet it the relative amount of water tonnage and rail tonnage is a matter of vital concern. A single ship carrying a load of freight would compete with the railroads, but how much would the single shipload affect freight rates? The competition would not be large enough to amount to anything. It is a question of relation or of comparison always.

I want to read the testimony to you, just as it was given.

Mr. BARTINE. Mr. Hastings, don't you think that in determining, or attempting to determine, all the force and effect of water competition through the Panama Canal a period of from three to six months would be a safer guide than a single month?

Mr. HASTINGS. Certainly, if we had it to take, but the Panama Canal had only been opened six weeks when we prepared these figures.

Mr. BARTINE. I am not criticizing your methods, Mr. Hastings; I presume you acted upon the best data you had. I am only trying to bring out the fact that perhaps a longer period of time would be a fairer test.

Mr. HASTINGS. Undoubtedly.

Mr. BARTINE. Supposing the Interstate Commerce Commission should conclude that it wants a longer time to investigate and see just what amount of traffic does pass through the canal—I suppose you would not object to their taking that time, would you?

Mr. HASTINGS. We could not object, but we hope for an early conclusion of this case.

Mr. BARTINE. Before anything may happen to prove you are wrong; is that it?

Mr. HASTINGS. No, Judge; that is not a fair inference.

Mr. BARTINE. Mr. Hastings, have you any way of knowing whether the rail tonnage for the month of September last—and you know what I mean by rail tonnage, that with which the water competes—showed a marked falling off during the month of September?

Mr. HASTINGS. I don't know.

Mr. BARTINE. Don't you think that is a rather important point in its bearing upon this question?

Mr. HASTINGS. I believe it would have an important bearing, but in the ordinary accounting methods we could not obtain that rail tonnage for some weeks yet for the month of September.

Mr. BARTINE. The point I had in mind, Mr. Hastings, was that 77,000 tons for September showed an immense increase. Now, unless that is to be accounted for in some other way, it must have been taken away from the rail carriers.

Mr. HASTINGS. I have no doubt it was, Judge.

Mr. BARTINE. Do you know anything about it?

Mr. HASTINGS. I know that they pulled freight originating in the same territory served by the rail carriers. If they got it, we did not.

Mr. BARTINE. Then the tonnage of the railroads for the month of September should have a very substantial falling off, should it not?

Mr. HASTINGS. Well, to the extent that we lost that business.

Mr. BARTINE. You represent a railroad, do you not?

Mr. HASTINGS. Yes, sir.

Mr. BARTINE. Don't you think it would have made a better showing on your behalf if you had actually presented figures showing how much your tonnage had fallen off during last September, than to simply show how much the boats increased?

Mr. HASTINGS. It was a showing that was impossible, as I said a moment ago, for us to make at this time.

Mr. BARTINE. It was easier for you to get water tonnage than it was to get the rail tonnage?

Mr. HASTINGS. We got the water tonnage, and we could not get the rail tonnage.

He had the water tonnage—the tonnage of a competitor—right down to the last pound, but he did not have the tonnage of his own railroad. Now, you see the point of that. It did not make a bit of difference how much tonnage had passed through the canal unless his road had been hurt by it. As I have intimated in these questions, unless these 77,000 tons were extra, they must have been taken away from the rail tonnage, and the records of the railroads would have shown it. He does not have a word upon that.

Mr. Wood. He did have a complete statement of all the tonnage that moved from the same district, either by rail or water, the year before.

Mr. BARTINE. I am giving the testimony as he answered the questions that were put to him. It is here. He did not show that the tonnage by rail had fallen off, by any means.

That brings me, very naturally and properly, to a consideration of the status of the Panama Canal. I have taken the position very insistently that if water competition is to be considered as an element at all by the Interstate Commerce Commission, justifying a lowering of rail rates to meet it, the Panama Canal should clearly be made an exception to that rule.

The Panama Canal was built with the people's money; it is a Government-owned, controlled, and operated waterway. It was built for the purpose of expediting and facilitating traffic between the two oceans and, in part, between the two coasts of the United States.

Mr. Clark, in his statement, repeats what I have adverted to before, and what appeared in their schedule C order, in answer to this argument of mine, that the Panama Canal is only one agency, and it is the duty of the commission to consider both the canal and the railroads, which are another agency, and like some others, he referred to the fact that some of our railroads have been built, in part, by Government subsidies, and the granting of lands, and the like, and he undertakes to put the two on the same footing for that reason. In my opinion, the cases are as wide apart as could possibly be the case. It seems to me like an insult to common intelligence to say that because the railroads have been assisted by the Government by land grants to the extent of perhaps \$500,000,000, they are entitled to still further aid at the hands of the Government of the United States in their efforts to break down and diminish the value of an agency that is distinctively a Government property. I do not see how a man can invoke the fact that these railroads have received assistance from the Government as an argument why they should get more assistance at the hands of the Interstate Commerce Commission by allowing them to meet competition through the Pan-

ama Canal, when by doing so you are, in part, at least, defeating the purpose for which the Panama Canal was constructed.

The CHAIRMAN. Is not the error in that argument the failure to distinguish between the canal and the ship lines that operate through the canal? If the Government had subsidized the ship lines to the extent of \$400,000,000, that would have been more of a parallel case to the subsidizing of the railroads; and the argument to be applied to that case would be that in view of the fact the Government had aided the ship lines in their operations, that we ought to be very liberal to them in protecting them in their earning capacity.

Mr. BARTINE. I might make my distinction clearer. After all those contributions made by the Government in aid of the railroads, the railroads passed into private hands. They passed into private ownership. As we know, many of the projectors have become enormously rich. They became distinctly private properties, which had been acquired through the aid of the Government. But the canal remains a Government property pure and simple. You will remember that one provision of the Panama Canal act is for the payment of tolls.

When the Interstate Commerce Commission makes an order allowing railroads reaching the coast to lower rates, they are stopping ships from passing through the canal, and that deprives the Government of money which should go into the Treasury of the United States. It is law that every ship that passes through the canal must pay a certain toll per registered ton. If a 10,000-ton ship passes both ways, it must pay \$24,000 in revenue to the Treasury of the United States. If that ship is headed off by a slide, or an order of the Interstate Commerce Commission, the Treasury of the United States loses \$24,000. You can not possibly get away from that. It is perfectly manifest. It was the purpose of the law to protect that canal.

I want to call your attention to section 5 of the interstate commerce act, as amended August 24, 1912:

That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers, for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

From and after the first day of July, 1914, it shall be unlawful for any railroad company or other common carrier subject to the act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere, with which said railroad or other carrier aforesaid does or may compete for traffic, or any vessel carrying freight or passengers upon said water route or elsewhere, with which said railroad or other carrier aforesaid does or may compete for traffic, and in case of the violation of this provision each day in which said violation continues shall be deemed a separate offense.

I will skip the next paragraph and read a little farther on:

If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water *other than through the Panama Canal* is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under considera-

tion, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July 1, 1914.

Now, you see the objection to allowing the Interstate Commerce Commission to grant exemptions from that. That provision of the law to extend the time expressly excludes the commerce through the Panama Canal, or ships operated through that waterway. If that is not intended to protect that commerce, I do not see what it can possibly be intended for, and I want to ask this question: What good would it do for Congress to lay an interdict upon the railroads owning or controlling ships passing through that waterway, which might have the effect of preventing competition by water there and then let the Interstate Commerce Commission come in and make an order allowing the railroads to lower their rates at coast points to meet that competition, which would have precisely the same effect.

Mr. Chairman, the Panama Canal act is an act relating to commerce; so is the interstate commerce law. It is a thoroughly well-established principle of law that all acts in *pari materia* shall be construed together. I contend stoutly that the Panama Canal act should certainly be made an exception to the general rule of water competition if it is to be recognized at all.

Mr. Chairman, it is 3 minutes of 5, and I am a little bit tired. Would you object to taking a recess at this time?

The CHAIRMAN. I was very much in hopes that we could get through with the hearing to-day. How much more time do you desire?

Mr. BARTINE. There is quite a little that I would like to bring out.

The CHAIRMAN. Very well; we will take a recess until 10 o'clock to-morrow morning.

(Thereupon, at 5 o'clock p. m., the subcommittee adjourned until Thursday, March 21, 1918, at 10 o'clock a. m.)

STATEMENT OF MR. H. F. BARTINE—Continued.

Mr. BARTINE. I wish to thank the chairman for his indulgence in allowing me to proceed again this morning, because I was really somewhat fatigued, and as I am making the closing statement on behalf of the proponents of this bill, it was my desire to make it about as complete as I could, and I did not want to leave out anything that I really thought was material and would be of assistance to the committee, and I hope it will not be considered a manifestation of ego when I suggest that after having been connected with these cases, as I have for 10 years, I can give the members some little information that they do not already possess. If I have not learned something about those things during 10 years, in this connection, I certainly must have been a weakling to begin with.

Now, I shall proceed, Mr. Chairman, and not talk against time. I never had sufficient ability to do that successfully.

When the recess was taken last evening, I had a sort of general notion that I had completed about all that I cared to say about the Panama Canal, but there are one or two other points that I would like to bring to your attention. I am laying particular stress upon the Panama Canal because of its overshadowing importance with reference to this bill and because it is altogether exceptional

in its character; and in referring to it I want to mention briefly Mr. Clark's statement of the view of the commission with regard to their authority in the matter and their interpretation of the statute. He stated that their view was that the provision of the law prohibiting the transcontinental lines from owning ships operating through the canal was to prevent them from in that manner taking the initiative and virtually destroying water competition through the canal, and that the whole matter—which he left a little indefinite—was placed in the hands of the commission. I can not accept that interpretation. If you will examine section 5 of the interstate-commerce law, as amended, you will see that Congress itself makes an exception with regard to the Panama Canal. After providing that after a certain date in July these transcontinental lines of railroad—no railroad shall own any ships operating through the canal in competition with railroads—it provides that the Interstate Commerce Commission may, after investigation and in certain cases, extend the period of time beyond the statutory limit, but the Panama Canal is expressly excepted; and the manifest purpose of Congress was to protect commerce through that canal in every possible way. It is shown by the toll provision and also by this.

I want to emphasize this fact, that if the Interstate Commerce Commission makes an order which has substantially the same effect as would result from the railroads themselves plying ships through the canal it operates unjustly in several ways: It is unjust to the legitimate water carriers, such as the Hawaiian and Luckenback Lines; it is unjust to the Congress of the United States, because it tends to defeat, in part at least, the purpose for which that canal was constructed; it is unjust to the Treasury of the United States, because it keeps money out of the Treasury which is imperatively needed there for the support of the Government in all of its branches, including the Interstate Commerce Commission itself; and, above all, it is rank injustice to the intermountain country by widely increasing the discrimination of which that section of the country has been complaining for so many long years.

Mr. LYON. May I ask the judge just a question there?

Mr. BARTINE. I will be glad to answer it if I can.

Mr. LYON. I want to ask you this question: Under the construction given to the Panama act by the commission, which you have just explained, by which they treat the Panama Canal as producing such a condition of transportation as to come within what the commission terms a special case under the fourth section, by which they allow the carriers to violate the fourth section, does not that construction make it more beneficial to the rail carriers in competing with the water lines through the Panama Canal than if Congress had left it possible for the rail carriers to own boats and operate them themselves through the canal? By that I mean—

Mr. BARTINE. I understand you.

Mr. LYON. The Luckenback Steamship Co., I presume, has about \$30,000,000 invested in boats operating through the Panama Canal; it did at the time the canal was opened to shipping. Now, if the railroads had to compete with boats of the Luckenback Steamship Co. they would have had to have made an investment of thirty or forty million dollars to do so; but under the present plan, as construed by the Interstate Commerce Commission, they are relieved entirely of that investment.

Mr. BARTINE. You are absolutely right in regard to the matter. The interpretation placed upon that provision of law by the Interstate Commerce Commission is not only more unjust to the water carriers operating through the canal, but it is more injurious to the country as a whole, for the reason which has been given; and it is more beneficial to the railroads than it would be if they had to make their own investments in ships to do that work. There can not be any question about that. And now, right in this connection—as Mr. Lyon has broken in upon me in this way, and very properly—I might say a word about water carriers in general. Of course, he represents a special interest. He is looking after the welfare of his clients. He has just the same right to look after their welfare as the railroad people who have appeared here have to look after the interests of the railroads; and the chairman has not failed to note that the railroad men have specifically declared that this is distinctively a railroad and transportation proposition, and they represent the railroad side of it.

Mr. Lyon has just the same right to present the side of the water carriers who are in competition. Now, I do not ignore the water carriers, neither do I appear for them especially; and I might say by way of explanation, because it comes in as well here as anywhere, that Mr. Shaughnessy and I are both here officially. We represent the State of Nevada, and we do it by virtue and authority of the law, and we have an express statutory provision which authorizes and directs us to do precisely what we are doing. We are representing no special interests. We are representing the people as a whole, and not merely the people of Nevada, but the people of the whole United States, as we understand it, and for that reason I feel it my duty to say a word on behalf of the water carriers wherever I think it is just and proper for me to do so, because they are an integral part of the business of the United States.

Now, then, I will proceed a step further. While I have laid special stress upon the Panama Canal, because of its legal status, I want to say that the same principle applies, although perhaps in somewhat lesser degree, to the case of competition by rivers—internal waterways—and we might say to the harbors of the country. Year after year, for a great many years, as shown by Mr. Shaughnessy, the Congress of the United States has made vast appropriations for the improvement of rivers and harbors. That can only be justified upon one ground, namely, that it would increase traffic by those waterways.

I submit as a matter—I will not say of cold law—but as a matter of sound public policy and fair interpretation of the statutes, that it is unjust, and the Interstate Commerce Commission is straining its powers and acting adversely to the best interests of the country and sound national policy when it makes orders benefiting railroads, enabling them to meet competition against these water lines which the Congress of the United States has labored so hard to develop and make more effective.

As I said before, it seems to me that the course pursued presents a case of one department of the Government arraying itself against all the other departments of the Government, and so with regard to the rail carriers. The same principle applies, but it is in very much lesser degree, because the rail carriers come nearer meeting each other on even terms than the water carriers and the rail lines do, and this is

notably true with regard to ocean carriers, some of whom are represented by Mr. Lyon. The ocean carriers and the rail carriers do not meet on even terms in transcontinental traffic. The rail carriers pick up business all along the line. They have their local traffic, which is charged for at higher rates than through traffic, while the ocean carriers have nothing in the world to go upon except through traffic from coast to coast points. They have their marine insurance to pay and their tolls. If a rail carrier puts its rates down somewhat in order to meet competition, it can recoup by charging larger rates at interior points where there is no competition, and the history of the country shows this.

The CHAIRMAN. I might suggest in connection with what you were just pointing out that during a great part of this time when the discrimination between the intermediate points and the terminals in rates was allowed, for the reason of water competition which they said they had to meet, that the water competition which has been testified to here in evidence as existing of the American-Hawaiian line, or Hawaiian-American—which way is that?

Mr. LYON. American-Hawaiian.

The CHAIRMAN. American-Hawaiian, that it is not only subject to the disadvantages which you have related—all of which, I think, is very pertinent—but that particular competition was subject to this disadvantage, that they had to handle their freight four times. They had to handle it when it was loaded on board the ship at New York, handle it when it was taken out of the ship and loaded onto the railroad train at the east terminus of the Tehuantepec Railroad, and handle it when it was taken off the railroad and loaded on the ship at the western terminus of that railroad, and handle it when they arrived at the Pacific coast port, where it was unloaded from the ship, whereas we will take the Southern Pacific Railroad Co., which is probably the most advantageously situated transcontinental line in that respect, because it is the only line that I know of that has a complete transportation system from an Atlantic seaboard to a Pacific seaboard. None of these other transcontinental lines that I know of have that, and pretty near half that—pretty near as much of it as the eastern part, at least, of the American-Hawaiian Steamship Co., is by water, the same kind of transportation that the American-Hawaiian had. Now, the American-Hawaiian has to unload from the ship at Tehuantepec and unload from the railroad again at Tehuantepec, whereas the Southern Pacific only had to unload from their ships at Galveston and load onto their trains, and then they had a short haul compared to the other transcontinental lines, to San Francisco, and did not have to handle the cargo again until they arrived at the Pacific coast. Pardon me for interrupting, but I thought I would put that suggestion in the record.

Mr. BARTINE. I am very glad you did, and I trust that you will feel no sense of humiliation, Senator, when I tell you I have used that argument repeatedly myself, but used it another connection. It merely shows how great minds run in the same channel.

Mr. LYON. Might I suggest that the roads—the Tehuantepec route—had no business especially except this Hawaiian business?

Mr. BARTINE. I will say, Senator, that I used that argument in another connection. I did it for the purpose of showing that as a broad, general proposition water competition could not be in any

way effective as to limit materially and naturally the quantity of freight carried to the Pacific coast by rail, because when it is carried by rail there will only be two handlings. It is loaded on the cars at the point of origin and unloaded at the point of destination, while when it was taken by rail, and especially when it was taken from an interior point like Pittsburgh and carried east to New York and there loaded on ships it involved all of the way from six to eight different handlings, which, of course, would necessarily add much to the expense of transportation.

Mr. SHAUGHNESSY. Judge, may I add a further suggestion as to the great strategic value of the Southern Pacific Co. because of their direct rail and water transcontinental line? Because of this unified transcontinental line under a single management from the Atlantic to the Pacific coasts (the only one in the United States), it has great strategic value in being able to dictate the proportion of rates, and largely the character of the rates, that all other transcontinental lines may maintain on the coast-to-coast business and the divisions of the rates they shall receive. Also it has been the strongest single factor in offsetting the so-called water competition which we are discussing here, and it has resulted in the past that because of its power various Pacific coast jobbers have cooperated with the transcontinental carriers in the matter of rates and have given to them their traffic in very large proportions as compared with the water routes. The reason for the strategic power of this great company is this, as I understand it: Its system comprises the Atlantic Steamship Co. from New York City to Galveston and then its rail line which reaches Los Angeles, San Francisco, and Portland. But this is only stating the problem in part. In addition to reaching the Pacific coast terminals, this great system also reaches practically all the important commercial points intermediate to the terminals. For many years past the long-and-short-haul rate system, that we are complaining against here, has enabled the Pacific coast jobbers to take eastern freight to their warehouses for storage and distribution back into the great inland empire, known as the Intermountain Territory. Therefore, in the event of a serious rate war between rail and water carriers, or if, because of a disposition on the part of the Pacific coast jobbers to give too much of their traffic to the water lines, the Southern Pacific Co. has been in the position of being able to make very low rates from Atlantic coast points direct to practically all interior points in New Mexico, Arizona, California, Oregon, Nevada, and Utah in competition with the Pacific coast jobbers and the ocean carriers. I think this is the reason why the ocean line of steamers promoted and operated by the San Francisco jobbers a number of years ago was discontinued and an agreement reached between the carriers and the Pacific coast jobbers whereby long-and-short-haul rates have since been maintained for the benefit and extension of the jobbers' distributing territory on the one hand, and, on the other, the promotion of long-and-double-haul traffic for the transcontinental carriers.

Mr. BARTINE. Well, I touched that, in a general way, in referring to Mr. Durborrow's claim of the strategic advantage of the Southern Pacific System, and it all goes back, in the last analysis, to the fact that they have got a water line from New York to Galveston. Mr. Shaughnessy has given you the details of how that works.

Mr. CAMPBELL. Judge, may I interrupt there for just a moment? Right in that connection, was it not your understanding, and was not there some evidence produced to that effect in April, 1916, that the northern lines were in favor of removing the discrimination on account of the ceasing of water competition?

Mr. BARTINE. It was my understanding at that time—and the atmosphere in the hearing room of the Interstate Commerce Commission was charged with the thought—that the northern lines were ready to comply substantially with the claims and demands of the intermountain country, and that the Southern Pacific was the great obstacle which stood in the way.

Mr. CAMPBELL. It was significant, was it not, that that fight against the commission removing the discrimination on account of changed conditions was made by the Southern Pacific Railroad Co., was it not?

Mr. BARTINE. At that time, do you mean?

Mr. CAMPBELL. In April, 1916.

Mr. BARTINE. 1915?

Mr. CAMPBELL. 1916, the beginning of the Spokane case.

Mr. BARTINE. I can not particularly fix that date, but I will state this, that all through the intermountain cases the Southern Pacific Co. has been the great force that we have had to contend with, while the others, of course, have swung into line and furnished testimony from time to time.

Mr. CAMPBELL. Let me call your attention to this, that in the last two years the contention made by the railroads that there should not be any change on account of changed conditions was made by the Southern Pacific, and then when the rates were proposed for the purpose of removing discrimination, the defense of those rates was made by the northern lines, is that not a fact?

Mr. BARTINE. That, I think, is all true. At the same time, those are matters of detail that really do not go to the merits of the proposition of whether we should have an absolute long-and-short-haul law, but they do go to show how the existing law has been abused, and in that way furnish a reason for its modification along the lines of our desires.

Now, then, if I may be permitted to proceed, I have some thoughts on other lines. There has been a great deal said in these hearings about the rail carriers taking the freight to the coast points at something just a little above out-of-pocket cost, and the Supreme Court of the United States has been invoked as authority in favor of that policy. It is true that the Supreme Court has sustained the action of the carriers in taking the freight to coast points at what, it was claimed, was a little above the out-of-pocket cost. That is, the actual cost of moving the freight, but in not one of those cases that has ever been brought to my attention was any showing made as to what the out-of-pocket cost really was. The naked assertions of the carriers that the freight did yield something above the out-of-pocket cost was taken as being true, because there was no evidence on the other side; but I have always taken the position, and I suggested it yesterday, that the claim that they were carrying freight to the coast terminals at something just a little above out-of-pocket cost was absolutely unfounded, and that our figures show that those rates were in and of themselves fairly remunerative. But let us suppose that they

do that; that is, suppose they do carry the freight at a little above the out-of-pocket cost. The statement of the Supreme Court is that it is justifiable, because it brings more money into the treasury than it takes out, and, therefore, casts no burden upon the remaining traffic. That view is plausible, but it is unsound. It must be remembered that the out-of-pocket cost only relates to transportation, and, according to the figures which were prepared in the Reno case, the transportation costs are approximately only half the total cost of operating a railroad. Consequently, if this traffic which goes to the terminals only pays a little above the actual cost of transportation, it throws all the rest of the burden of the operating expense of the road upon the remaining portion of the traffic, and it must, necessarily, work an injustice. Strive to prevent it as you may, it would be bound to lead to higher charges at intermediate points, because every railroad is seeking to obtain a just and fair return upon the fair value of its investment.

Take the Central Pacific Railroad. Assume that upon that investment 6 per cent is a fair return. Suppose that the charge to the coast is such that at that point it will only yield about 1 per cent of the out-of-pocket cost. In order to make up the 6 per cent return upon the whole, it is a self-evident proposition that the rates at the interior points must be excessive in and of themselves. Now, a railroad is bound to meet competition and suffer the effects of it, just the same as any other business, and let us suppose another case by way of illustration as bringing out the true principle which should be applied in a case of that kind. Let us suppose that 6 per cent is a fair return for the Central Pacific to earn. Let us suppose that its rates to the coast are such that that portion of the traffic will only yield 3 per cent and that it represents half the total traffic of the road. Well, now, if the 6 per cent return is to be kept up, it is manifest that the rates must be fixed at such figures on the remaining portion of the road as will yield 9 per cent on that part of the business, because the 9 plus 3 makes 12, and divided by 2 makes 6 per cent for the entire road; but that it not the way it is done. We find that the Southern Pacific Co. has made its full 6 per cent and 7 per cent and carried great sums to surplus, as has been shown by the figures introduced here. Now, one of two things must be true. Either the rates at the terminal points must be of themselves fairly remunerative or else the interior must be tremendously overcharged. Have I made myself clear upon that?

The CHAIRMAN. I think so.

Mr. BARTINE. Mr. Wood offered an illustration the other day intending to show that the carrying of freight to the coast terminals at less rates than those applied at interior points could not do any harm, and his illustration was that of a 10,000-ton ship which had 9,000 tons of freight and it had 1,000 tons of space remaining. Now, he said that if that ship fills up that remaining space at a lower rate it does not hurt anybody. Well, whether it does or not depends upon circumstances. Suppose that ship is loaded with 9,000 tons of freight of a certain kind. Suppose another man comes along with 1,000 tons of freight of exactly the same kind and the freight is all to be sent to the Pacific coast for distribution and sale, or for use for any purpose, and suppose the man who comes along with his 1,000 tons is given half the rate

that the man had to pay who furnished the 9,000 tons. Will it be seriously claimed that the man who had to pay double rate on his 9,000 tons has not been placed at a disadvantage? It might be said that the rate charged him is a reasonable rate per se, but if he had to pay that rate in competition with another who only pays half as much, there the question of discrimination comes in at once and he is placed at a disadvantage in his business. It seems to me that that is perfectly clear and plain.

There is another reason which I have for believing—in fact, there is more than one reason—that these terminal rates are fairly and reasonably profitable, and when I speak of the terminal rates I speak of the rates that were in effect before this last order was made. The reason is found in the fact that in the State of California alone the Southern Pacific Co. applied terminal rates at about 160 points where there is no more water competition than there is at Spokane, or Reno, or Salt Lake City, or Phoenix. Now, Mr. Jones said, as I was told—I was not present—that the reason of the railroad company for doing that was to punish San Francisco for attempting to establish steamship lines. That may have had something to do with it, but it is unbelievable that that was the one sole cause; that the company would deliberately go to work and establish terminal rates at 160 points where there was no water competition merely to punish San Francisco, unless the rates established at those interior terminals were reasonably satisfactory to the company and reasonably remunerative.

There is another reason, and we find that closely connected with the operations of the Panama Canal. The application of the railroads for permission to put in lower rates on the schedule C articles was based on the intensified water competition through the canal. They had been claiming, in season and out of season, that their rates to the terminal points were not fairly remunerative: that they simply yielded a little something above the actual cost of carrying the goods, but nothing like a fair compensation for the service, and yet they deliberately went before the Interstate Commerce Commission with an application in which they asked the privilege of lowering their rates on the coast points anywhere from 15 to 25 per cent below the figure at which they then stood, in order to meet the competition.

I do not see how you could find clearer and more conclusive evidence than that, that the terminal rates in effect had theretofore been reasonably remunerative, and I wish right here to give you an illustration that I have used before, because I can think of none better, but it is typical of many that might be given. Much has been said about structural iron and steel, and justly so, because it is one of the most important items of transportation to the West. It has been shown in these cases that a million and a half tons of iron and steel are carried by rail, from East to West—from eastern points to the Pacific coast—and that is probably one-quarter or nearly one-quarter of the entire tonnage carried.

The rate on iron and steel at the coast was 80 cents per hundred-weight. That, it was claimed, was not remunerative, that it yielded something above the cost of carrying it, but it was not fair compensation for the service. What did the railroads do? They deliberately asked the Interstate Commerce Commission for permission

to lower that rate at certain points to 65 cents, or from certain points to 65 cents per hundred, and from certain other points to 55 cents per hundred, thereby confessing that their 80-cent rate, from some points at least, was excessive, or, putting it more accurately, thereby confessing that a 55-cent rate from certain points would be compensatory, because they could not ask relief to put in a rate that was not compensatory within the definition given by the Supreme Court of the United States. Now, see what that would mean: If you changed the 80-cent rate to 55 cents, it means a difference of \$5 per ton; it means a difference of \$200 on a car of 40 tons; it means a difference of \$10,000 on a train of 50 cars. The railroad company deliberately asked the Interstate Commerce Commission to permit it to reduce its revenue, on a single train, \$10,000, when it was claiming that the returns were already insufficient upon that train. I submit that that is pretty strong evidence that the terminal rates upon iron and steel were reasonable, so far as the railroads were concerned. The same commodity at Reno was charged \$1.42, a back haul of 62 cents.

Mr. LYON. The commission granted the relief, did it not?

Mr. BARTINE. And the commission granted the relief.

Mr. Clark adverted to the fact, or at least he supposed that an ironclad long-and-short haul might interfere with the zone system in the East, because the freight, you know, crosses from one zone into another, where the rates are different. I can not go much into detail upon that point, but I want to suggest this: Those zones are not inviolate; those zones have been changed from time to time. If my recollection is correct, when the fourth-section order was made, there was some change in the lines of those zones. The railroads never hesitate to change the zones themselves when it is to their advantage to do so, and it is a very easy matter to re-form the zones in such manner as to meet the requirements of a long-and-short-haul law.

Mr. CAMPBELL. Let me ask you, Judge, in this last order, whereby the rates were graded east of Chicago, they were not graded entirely by those zones, were they? The rates, even in some instances, took a differential of only 5 cents instead of the 15 cents, 25 and 35 cents.

Mr. BARTINE. Yes; that is true, of course; but the point that I am making is that the zones are not in any sense sacred and unchangeable. They can easily be adjusted to meet the requirements of the law.

Now, then, I think in a general way I have covered the general principles which I think lie at the foundation of this proposed legislation, and constitute its justification.

I want to, with such brevity as I can, notice some of the objections and also give some little attention to the character of the objectors, not using the word "character" to indicate that I am going to attack them personally or anything of that sort, but I wish to call attention to the fact that throughout these hearings, which have now covered a period of seven or eight days—to-day, I think, is the eighth day—every particle of opposition to the bill has come, either from the rail carriers themselves, who are immediate parties in interest, or from coast cities that were the beneficiaries of preferential rates which they received under the present law and before the last order was made, and which, by their own admission, they hope to have restored at the

close of the war when the commission modifies the existing order. Not one substantial business interest outside of the jobbing interests has appeared in opposition to this bill. Mr. Spence and Mr. Winchell both declare that it is exclusively a carriers' proposition. They both declare that the coast cities have nothing whatever to do with it. I am endeavoring to deal with this matter in a spirit of perfect frankness. I have always taken the position that the coast cities had no legal standing in the intermountain rate cases, because their only demand was for the retention of the preferential rates, which no law in the world can give them. For that reason I deny that they had any legal standing before the Interstate Commerce Commission. Nevertheless, they were there, and there in force, entering their appearance, putting witnesses upon the stand, making arguments and dividing the time and all that, and always upon the railroads' side. Whenever we wanted to find Seth Mann, we always looked over into the railroad corner, and there he was in the bosom of his friends.

Now, it seems that they have no further use for Mr. Mann and they have turned him down cold, and, very naturally, Mr. Mann is a little indignant over it and manifested it the other day. I don't blame him much. I do not like ingratitude myself, but they certainly did claim that they had a legal status in this case, because otherwise they would not have been there, because they know perfectly well that the Interstate Commerce Commission must make its orders within legal lines, and if they had no legal status they could not get an order in their favor. Of course, their interests were incidental, but they claimed that they were there as a matter of right; but I will be just to my friends from the coast. This is a different proceeding. We are not trying a lawsuit. This is a matter which concerns other interests in the United States and the coast cities have a perfect right to appear and make whatever showing they can in opposition to the bill. I do not question their right to be here, but if they come and expect to make their influence felt, I say that it is incumbent upon them to give good reasons for their opposition and that they have not done. You can find nothing in their reasons, which is not based upon the idea that coast points should have preferential rates after the war is over, and when the present order has been canceled or modified.

Mr. MANN. Judge, may I ask there, don't you recognize the fact that the representatives of the coast cities represent the commercial interests of those cities, as embodied in the chambers of commerce, and that those chambers of commerce include manufacturers and retail dealers, as well as jobbers, as you call them? In fact, all the commercial interests of the coast cities in California and the Pacific coast are represented by these chambers of commerce. Is not that so?

Mr. BARTINE. I understand that they have all kinds of business men in the chambers of commerce. I grant that, but you are peculiarly the attorney and traffic manager of the traffic bureau of the chamber of commerce, which deals with commercial conditions only. There has never appeared in any of these proceedings a representative of a distinctly business enterprise, in contradistinction to jobbing, in opposition to the intermountain country, except those that peculiarly represent the jobbing interests.

The CHAIRMAN. I understood that a statement was made here by a representative of the Chamber of Commerce of Portland, through Mr. Mann, that he expressly made the statement in writing here—

it is filed in the record—that the manufacturers' interests of those coast cities would be benefited.

Mr. BARTINE. I am coming right to it.

The CHAIRMAN. By removing this discrimination.

Mr. MANN. And, if you please, Senator, the manufacturers' interests on the coast are immediately concerned in the distributive rates south, north, and east bound, which we fear and believe will have a tendency to be increased if this profit from the coast-to-coast business was denied the railroads.

The CHAIRMAN. You differ in that point with Commissioner Clark? I understood Commissioner Clark's testimony here yesterday to be that in his judgment, if this discrimination was removed, the distributing field and opportunities of the coast cities would be improved and enlarged.

Mr. MANN. If we can maintain the same distributive rates, south, north, and east, the tendency would be to increase that distribution, because we would receive from the Atlantic coast the subjects of the distribution, and what Mr. Lothrop means, when he says that manufacturing would be increased upon the Pacific coast is that under the system of the absolute long-and-short-haul clause, combined with the distance tariff, which would make a higher rate to the coast than to the intermountain points, sometimes called a graded rate, that the Middle West would be excluded from the heavy coast trade, and, therefore, that amount of competition in manufactured articles would be removed from the Pacific coast, which would undoubtedly have a tendency to encourage the increase of manufactures there as against the Middle West.

Mr. BARTINE. Mr. Chairman, as they say on the floor of the House, "I hope this will not be taken out of my time." I think I understand Mr. Mann's status, just as well as he does. I have never heard him give utterance to a thought on the subject, in all of his repeated appearances, that has not had as its main feature the distributing of the trade of the State of California. Speaking of his representing the entire State, let me direct attention to a little circumstance that I think he will remember and will hardly deny. At the Chicago hearing, in October, 1914, upon the application of the railroads for special exemption of Schedule C articles, Mr. Mann, as usual, was there. He made one of his earnest and very excellent speeches, in which he took the position strongly that there was increased water competition to the coast, through the canal, and that concessions should be made, but he claimed that those concessions should be confined to the points where there was actual deep-water competition, and he made so effective an argument that the Interstate Commerce Commission acted upon it and, in making its order, confined the Schedule C rates to the deep-water ports right upon the coast alone, cutting out all the interior terminals to which I have referred, and my friend Mann was so well, so much impressed with the argument which he made, that he actually came to me, with my limited ability, to find out what I thought about it, and I was fair enough to agree with him. If water competition is to control, it should only control where there is water competition. Why, that is the common sense proposition, and I remember very distinctly how exceedingly angry our mutual friend Bradley, representing Sacramento, was about it. Figuratively speaking, he jumped all over Mr.

Mann. Now, I wonder if the people of Sacramento would be willing to accept Mr. Mann as their representative?

Mr. MANN. In this matter; yes, sir.

Mr. BARTINE. Why are they not here?

Mr. MANN. I notified them. I think they thought it was unnecessary. They prefer, however, to enjoy the advantages of their proximity to the sea, which results from the granting of the lower rates to the coast, than to lose it altogether, which would be the result of an absolute long-and-short-haul clause.

Mr. BARTINE. But the long-and-short-haul clause will not give San Francisco any lower rates than Sacramento will have, and Sacramento will be on an even keel with San Francisco, unless the rail carriers give Sacramento the benefit of the shorter haul; so they are not going to be hurt by a long-and-short-haul law.

Mr. MANN. I must differ with you there. They recognize their eastern distribution would be immediately interfered with.

The CHAIRMAN. Mr. Mann, you say they prefer to have their advantages of their proximity to the sea, and, really, that is the position of all of the coast cities in this question, is it not, that it is the natural right or the natural result of a natural condition?

Mr. MANN. I call it an economic right.

The CHAIRMAN. Yes; located on the sea.

Mr. MANN. Yes; or located near to it.

The CHAIRMAN. Now, if the thing is to be decided on the basis of natural advantages—that is a better phrase—why is it that the railroad companies come into the case and take just the opposite position? They come into the case and say the boat lines have a natural advantage by being on the water—cheap water transportation. We can't compete with them, but because we can't compete with that natural advantage, we must have artificial aid, in being allowed to put our rates down below what in other places would be called a reasonable amount.

Mr. MANN. The carriers' position in that regard, if the Senator please, is not by meeting the competition they are exercising an artificial advantage. They are exercising a principle of meeting competition by water, where they find it, which has been the practice, and the custom, and the economic law of the whole railroad, with respect to the construction of rates to ports where water reaches. As Mr. Clark said yesterday, in the case of the Southeast, the water means of transportation—canals, rivers, and so on—were in fact there long before the railroads were built. In fact, I remember a rather interesting circumstance that very cleverly illustrates that, and that is, that when the Baltimore & Ohio was built, it was the first road built in this country. I believe that they laid wooden rails, and a horse was used to draw the carriages over the rails. Then, when the locomotives were first invented, they were used and tried out upon that line, and, strangely enough, as they ran along parallel to the canal boats, the Baltimore & Ohio Railroad Co. was under injunction from the courts, for two years, against the running of these locomotives in the early history of the road, because they frightened the mules on the canal; showing that the canal was there first and the railroad came after.

The CHAIRMAN. Well, that is quite a long ways removed, is it not, when they enjoined the railroad company from operating engines

because they frightened the mules, and now they levy a tribute upon the interior of the country in order to make up the lack of profit on low rates to the coast, in order to enable the railroad engines to carry the freight?

MR. MANN. The answer to that, of course, is that the tribute upon the intermountain country and intermediate country will have to be higher, if the railroads are forced out of the competition at sea.

THE CHAIRMAN. Now, there is another branch of that same question—natural advantage. It was argued here by some of the witnesses, that if there is a circuitous railroad line, reaching a point A, and a short and straight railroad line competing with it, reaching the same point, that this circuitous line ought to be allowed to put its rates down to mere out-of-pocket cost of transportation, with a slight profit, in order to meet the competition of this short line, and charge the intermediate points on the circuitous line a larger rate, enough to make up the dividends on its stock and interest on its bonds. Now, there is another reversal of the doctrine of natural advantages. The short line there has the natural advantage, but by this system that natural advantage is taken away from it, and the disadvantageous line, or the line which naturally is at a disadvantage, is put upon an equal footing with it.

MR. BARTINE. It is often given an advantage, Senator, because the longer line has probably more local traffic to sustain it, and is, therefore, in better position to meet the shorter line at the point of competition.

THE CHAIRMAN. What I wanted to call attention to was, that it seemed the doctrine of natural advantages is used in two different ways.

MR. MANN. Well, of course, as far as water is concerned, that might be said to be—if one might use the expression—more natural than the existence of a natural monopoly, such as a railroad is, but the argument there—the answer there—is just the same as it is in the other case, namely, that as far as the intermediate points are concerned, which are located upon the longer or circuitous line, it can make no possible difference to them whether the freight goes by their line or by the shorter line to the ultimate point of competition. They can not be harmed. The freight is going to get there anyway at the lower rate. So far as the intermountain points are concerned in this matter, the freight is going to get to the coast by ships at the lower rate. Therefore, what possible harm can happen to them if the rail carriers carry some of it? It is going there anyhow.

THE CHAIRMAN. Suppose the situation was just reversed, Mr. Mann, and it appeared here that a lot of ships had been built and started to operate in the coastwise traffic from New York to San Francisco, and found out that they made a rate sufficient to pay the cost of transportation and interest on their capitalization but that that rate was so high they could not compete with the railroads. You contend that they ought to allow those companies, from the Government Treasury or from a tax on the interior country, enough to enable them to compete with the railroads?

MR. MANN. No, sir; my answer to that is that the suggestion that you make, under the law as it stands, and as administered by the Interstate Commerce Commission, is impossible of happening. As I set forth in my statement here, namely, that the making of a rate to the

coast is wholly and entirely under the control and within the initiative of water carriers, because the rail carrier will not be allowed, under any circumstances, by the commission or by law, to charge less than the water competitive rate under any circumstances, and at the same time depart from the fourth section; that is to say, charge higher to intermediate points, in order that the rail carrier may be permitted—and we must carry in mind all the time, if you will permit a deviation for a minute—the idea that these acts of the railroads are entirely permissive. It is a pure, permissive act. They don't have to do it. They have the right to do it if they are permitted to do it, and they have not unless they are. I say they will not be permitted to meet this competition at the sea, or to make a lower rate to the coast points unless there are two things that first happen. First, that the water carrier makes a lower rate, and second, that it carries the goods. There must be an actual lower rate, or an actual carrying of the goods. Then, of course, there is an axiom which we must carry along through all of this discussion, in order to see it at all, and that is that that operation by water is cheaper than operation by rail.

Mr. LYON. I do not want to interrupt.

Mr. BARTINE. I would like to go on with my statement.

Mr. LYON. I would like to have a chance to answer Mr. Mann.

The CHAIRMAN. Later on, I will give you an opportunity.

Mr. LYON. It is a misstatement of the facts.

Mr. BARTINE. Of course, whether water transportation is cheaper than rail depends upon the facts and circumstances of every particular case. You can not lay it down as a maxim by any means.

Mr. MANN. As a general rule, of course.

Mr. BARTINE. Now, then, I want to refer momentarily to the Lothrop letter. Of course, Mr. Mann puts his own interpretation upon it, as he has a right to do, but the rest of us have a right to understand that letter as it reads, and we are not bound by Mr. Mann's interpretation of it. He also, as he has the right to do, naturally lays broad stress upon the part which makes his way, but Mr. Lothrop certainly does state that the enactment of a long-and-short-haul law would have a tendency to build up manufactories on the Pacific coast, and I submit that as a business proposition, it is vastly more to the interest of California to have its manufactories built up than it is to promote a distributing trade in the manufactures of other States.

Upon that very point Mr. McCune, of Tacoma, spoke, and he referred to shipbuilding in Tacoma, and he seemed to think that the shipbuilding interests there would be seriously hurt by the enactment of a law of this kind.

Mr. McCune was inconsistent in two ways. In the first place, it could not interfere with shipbuilders in Tacoma getting their material. If they did not get it by rail they would get it by water, and they would not get it by water unless it was cheaper than it was to get it by rail. If they got it cheaper and just as satisfactorily by water, they have nothing to complain of on that score. Secondly, what propriety or consistency is there in a man advocating the building up of a ship industry, or development of a shipbuilding industry, at the port of Tacoma, or any other port on the Pacific Coast, and then advocating a railroad policy, the tend-

ency of which is to put the ships out of business after they are constructed?

Mr. Winchell, I think it was—and also Mr. Wettrick—referred to the assumed fact that this same principle of allowing the railroads to charge more for a shorter than for a longer haul prevailed in England. I do not know anything about the English law on that point, and I do not care anything about it. I am not going to England for any examples or precedents with regard to this question. If my memory serves me, and I think it does, when the administration control and compensation bill was before your full committee, Secretary McAdoo was there, and in reply to some point that was made he stated, and with some little snap, that they were not looking to England for any precedent.

The CHAIRMAN. Physical and geographical conditions in England are utterly different.

Mr. BARTINE. Exactly; I was going to say that. Aside from that the geographical conditions—I will repeat your own language—are altogether different. In the first place, England is a very small country. This land of Great Britain, England, Scotland, and Wales contains about 90,000 square miles. That is 20,000 square miles less than is contained in the State of Nevada, and it is entirely surrounded by water. In proportion to its size, it has an immense shore line. If a line 50 miles inland from the ocean were to be drawn all around the island, I do not believe that I would be very far wide of the mark in expressing the opinion that half of the territory of that island would be found outside of the line as thus drawn, because you are taking the outer margin of the territory; but at all events we can see that it would represent an immense proportion of that country, and along that narrow border it is certain that the shipping interests must substantially control for all time, and any question that may arise in so small a country, and with its short hauls and dense population, would be almost infinitesimal by comparison with the problems which present themselves in this great continental domain of ours.

Mr. Wettrick quoted from some writers on railroad law. I want to say upon that point that I have read some of those writers, but every one of them approaches these questions from the railroad point of view. It looks as if they had made the railroad side of these questions their special study. You can find almost anything in the standard textbooks on railroad law that you want—that is favorable to the railroad contentions. I do not pay any attention to them in dealing with a question of this kind, and I am not aware that any of them have dealt specifically with the question of a long-and-short-haul law, which is now before us.

Again with the conditions at the coast, let us suppose a case, which is really impossible—that the railroads are to be entirely deprived of westbound traffic to the coast and that the ships get it all. That would not mean the putting of the railroads out of business. The railroads would have the distributing of trade just the same. The ships could not go upon land. The freight would have to be unloaded, and then it would be carried inland by the railroads.

If the ships get it at all, they have got to get it by applying lower rates, which will tend to the upbuilding of the country, which will lead to increased production, and make a great deal more of

distributing business for the railroads than they have at the present time, and particularly at the ports of California. It is far more to the interest of California that the interior should be built up and developed than it is that a few jobbers at the ports should thrive by distributing goods. For example, what an advantage it would be to the State of California if the population of Nevada were double, and the same is true of all these other interior States. It is said by men who are familiar with the matter, who have traveled all over the United States, that Nevada is the best field, in proportion to population, anywhere, to sell goods, to be found in the American Republic. It has always been a State of high-price levels, high wages; the people are good liver. They buy large quantities of the very best kind of goods. Suppose the population were doubled or trebled, as it might easily be under more favorable conditions, see what a tremendous market that would make for the native products of the State of California, to say nothing of the manufactured products of that State, if the manufacturing should be developed there, and she would naturally buy from California, rather than go way back East in order to get them.

Again, the point is made that we would be at just the same disadvantage anyway, because the ships would bring the freight into the ports, and then the rail carriers would take it and carry it over to Nevada, and we would have to pay the combination rate just the same; but as I before remarked, that combination rate would necessarily be lower, because the ships would not get that traffic without applying lower rates, and if they made the combination, it would make a lower rate into Nevada and other interior points than at the present time; but the contention is when you get back there that the railroads would raise their distributing rates into Nevada. My answer is they can not raise those distributing rates above what the Interstate Commerce Commission will declare to be reasonable; but competition itself, again, would tend to hold them down to reasonable limits. It is not to be supposed that these great trans-continental lines of railroads would be willing to see all of their lines east of Spokane and Reno and Phoenix, and the other points, go out of business. If they want to continue operating those lines, they will want to bring goods from the East as much as they could, and get as long a haul as they could, and for that reason when they were carrying goods eastward from California and goods westward from eastern points they would meet at a certain point, and competition at that point would necessarily force lower rates.

In speaking of that I want, in order to make myself clear with regard to this matter of competition, to say that I do not deny the right of the railroads to meet competition through the Panama Canal, although it is government owned, controlled, and operated; but I do say that it must be done upon fair and equal terms, they must not do it in a way to work injustice to any portion of the patronage of the respective roads, and that they do when they lower the rates to meet the traffic through the canal and keep them up at all other points. There is no reason to doubt, Mr. Chairman, that the railroads of this country will always be able to take care of themselves without any artificial advantages being given to them. If they lose money at the coast points, they will recoup their losses by the tremendous growth and development of the interior of the country,

and ultimately they will find that they must rely upon this interior for their support.

Mr. Mann adverted to the fact that these railroads would never have been constructed if they had not been able to reach the coast ports. I do not concede to him any copyright on that. I brought that out myself in argument, and did it for the purpose of showing that their coast rates are reasonable in and of themselves, otherwise they would not have been so anxious to get there. There is not a transcontinental line that would have been constructed if they could not reach a point on the coast, and primarily they expected to get the major portion of their business at the coast, because the interior was less settled, and is it to be supposed they would have sought that business if they had not felt it was reasonably remunerative; and mark you, when railroad construction across the continent began the Central Pacific was the first one, and it ran right into the very face of the strongest competition at the ports, the clipper ships, the ships which carried transportation around Cape Horn, and they met those clipper ships so successfully that they drove them completely out of business. That magnificent fleet of clippers is simply a matter of history; and now, since the first one was built, eight more roads have been constructed, all reaching for terminal points, and not one of them would have been finished if it had not been able to get there. We must conclude that they regard that business as desirable.

Mr. McCARTHY. Is it not a fact that the last two transcontinental lines built, the St. Paul and Western Pacific, were built since the construction of the Panama Canal was commenced?

Mr. BARTINE. That is true.

Mr. LYON. Built so they could lose money.

Mr. BARTINE. I can not think of every little matter of detail, Mr. Chairman. Mr. Mann says that the railroads at the present time are working right up to 100 per cent of their efficiency. Let me say, Mr. Chairman, that there is no such thing as 100 per cent efficiency in a railroad, except as a temporary proposition. There is nothing in the world to prevent railroads from increasing their efficiency, and they have been increasing their efficiency right straight along for a great many years; and again, I want to refer just briefly to the exhibit made up by Mr. Shaughnessy at the beginning of the Reno case. He not only figured out the cost of transportation, but he also went quite at length into the improvement in transportation facilities. He showed the tremendous increase in size and power of engines, and improvement in cars and all that sort of thing, and while I have not the figures at command, I am very sure that, taking a period of about 20 years which he covered, he showed that the absolute efficiency of a railroad train had been fully doubled. Was not that so, Mr. Shaughnessy?

Mr. SHAUGHNESSY. Yes.

Mr. BARTINE. Well, there is no limit to it.

Mr. SHAUGHNESSY. Just at that point, advert to Mr. Spence's testimony the other day, wherein he said the Southern Pacific line itself had increased its transportation 100 per cent since 1915.

Mr. BARTINE. Increased its transportation?

Mr. SHAUGHNESSY. Yes.

Mr. LYON. Number of ton miles.

Mr. MANN. Tons 1 mile.

Mr. SHAUGHNESSY. With the same plant and same facilities, showing that the Southern Pacific property was meeting this competition out there, and while they were carrying an excess of 100 per cent in service capacity that the rates have been high enough to pay an adequate return on this property.

Mr. BARTINE. That suggests another thought, too. When we made our application for the cancellation of schedule C order, it occurred to us that it might be a very good thing to show what effect those reduced rates to the coast had had upon the revenues of the railroads, so our secretary, Mr. Walker, who is a most excellent rate man, did some figuring. He took 47 typical commodities, what he considered to be fairly representative, and he found that upon six of those commodities the railroads had suffered a small loss of revenue—exceedingly small—and on the remaining 41, in every instance, there was an increase of revenue, due to heavier car loading, showing that previously they had not been loading their cars up to maximum efficiency; but we don't stop there. There is nothing to prevent them from increasing the size of their engines, still more, and they will do it. There is nothing to prevent them from increasing the size of their cars, and they will do it. I can remember when a 20-ton car was considered a pretty good sized car. What is the largest they have got now, Mr. Shaughnessy?

Mr. SHAUGHNESSY. One hundred thousand capacity.

Mr. BARTINE. Fifty tons. Now, at the present time, as I understand, I think they are contemplating cars that will carry 200 tons, and perhaps 300 tons, and I do not see anything in the situation to prevent it. I do not see that it presents any mechanical impossibility, if they improve their track and rails and roadbed, which they can do; but the assumption is that the improvements are all going to be in the steamships, and not in the railroads.

I want to get through at noon. There is another point. In his statements before the Newlands committee, and again before the Interstate Commerce Committee—and I think that you drew the matter out yourself, Mr. Chairman—ex-Senator Bristow called attention to the fact that this policy of charging less for the longer than the shorter haul, had a strong tendency and had the effect of building up great and congested terminals at the expense of the rest of the country. I want to emphasize Senator Bristow's statement and say that I am in full accord with his position upon that point, and to go further and say that I do not think that it is good policy for this country to so conduct its transportation as to amass and congest the business at certain favored terminal points, building up great and populous communities there at the expense of the outlying country.

It is a great deal better to have the commercial points separated as widely as business calls for, but to have numerous commercial points at reasonable distances from each other, and each operating within a comparatively limited area of territory, rather than to have one great terminal, with practically the whole United States subservient to it, as is the case with the city of New York. It is very much more to the advantage of the country as a whole to have this population and its wealth and business distributed more or less equally throughout the country than it is to have it congested at certain points. Take the State of New York as illustrative.

It is called the Empire State of the Union. It contains the greatest population and the greatest wealth of any of the American States, but you take out the city of New York—Greater New York—then go across the line in Pennsylvania and take out the largest city in that State, and the State of Pennsylvania holds a commanding lead over the State of New York. It is more populous, and it is richer, strange to say. The great predominance of New York as a State is due to the abnormal development of New York City.

Another comparison: Eliminate Chicago from Illinois, and then eliminate the largest city in Ohio—I think it is Cleveland—from Ohio, and, while Ohio is about 16,000 square miles, as I recall it, smaller than Illinois, I will venture the statement that it will be found that Ohio would be the richer State of the two and the more populous State. These great coast cities, too, are danger points. Just think of it for a moment! Look at the enormous mass of wealth lying along the Atlantic seaboard that is exposed to attack in case of war with a great, powerful, naval adversary. Without having the figures specifically in mind, I think I can safely say that there is more wealth along the Atlantic and Gulf seabords—perhaps I ought to include the Pacific coast—within range of the 14 and 15 inch guns that are carried by the great modern battleships than is contained in the entire Empire of Austria. It sounds like a big statement, but I think it is true. I do not think the total wealth of Austria exceeds \$30,000,000,000, and I am quite sure within the region I have named you can find \$30,000,000,000. It is said New York State alone contains \$25,000,000,000, and New York City alone contains about thirteen or fourteen billions, and if they are attacked the whole country has to defend them.

Among their arguments, too, it is urged that this legislation should not be enacted because it will place a limitation upon the power of the Interstate Commerce Commission, and we are rather plaintively asked, "Why not trust the commission with this matter, the same as with others?" My answer is, because of the difference in the question which is involved. There are different kinds of measures which become the subject of legislation, or may become such. Some are of greater significance than others. There are some subjects that are so vitally important to the people that any change of the law upon those points, or any legislation upon those points is expressly prohibited by the organic law of the State or the Nation, as the case may be. While a State legislature is invested with the power of legislating generally, the State constitution says, "There are certain things you shall not do," and it does not do those things. It is because of the supreme importance of those things to the people, and the lack of safety which lies in intrusting legislation upon those points to a transitory body, such as a State legislature usually is. Now, just so with the Interstate Commerce Commission. The general features of that law might safely be intrusted to the Interstate Commerce Commission, but we are now dealing with one special feature, a feature which Congress itself recognizes as being peculiarly exceptional, and as being especially in need of safeguarding. It is treated by the Interstate Commerce Commission itself as one of paramount importance, having been singled out and enacted for the purpose of safeguarding the people against a custom which had grown up, which was wrong upon its face, and upon that alone

I want to read just a word from Commissioner Lane, in his decision upon the fourth section case, under the caption "The Railroad Commission of Nevada and Mariposa County Commercial Club against the Southern Pacific Co., et al," and I read from page 338 of that decision.

The CHAIRMAN. What is the number of the——

Mr. BARTINE. I do not know the number of the volume that it appears in. This is in pamphlet form. Oh, yes; it is in 21 I. C. C. Referring to the first paragraph of section 4, which lays down the rigid rule of the long-and-short-haul clause, the commissioner goes on to say:

The language of this first paragraph reveals the philosophy upon which this first section was originally based. The Congress is continuing its declaration of antagonism to unjust discrimination. This provision is not a distinct and separable part of the act. It is but one declaration or pronouncement as to what Congress regards as inimical to public policy. Instead of allowing this kind of discrimination to remain in obscurity as at first, the law separates and distinguishes it by naming it. To charge more for the shorter haul over the same line shall be presumptuous evidence of unjust discrimination, and the burden is cast upon the carrier of justifying a condition which is *prima facie* unlawful and unjust.

That language itself shows that the Interstate Commerce Commission and Congress both regarded this form of discrimination as exceptional, and the abuses which have grown up under it have been of such magnitude and have been the subject of so much complaint, and the relief afforded has been so entirely unsatisfactory, that those who have been discriminated against feel that they are justified in demanding a change of the law.

Just a word or two more: There is no question that a rigid long-and-short-haul section will be constitutional. The decision of the Supreme Court in Two hundred and thirty-fourth United States, page 276, in upholding the Interstate Commerce Commission's fourth section order, sets that question forever at rest. It leaves no lawful room for doubt. That question can not be raised.

I want to call your attention, Mr. Chairman, to the fact that a number of the States have laws of exactly that character. We have one in the State of Nevada. We have an ironclad law prohibiting the charging of more for a shorter than a longer haul over the same line in the same direction, the shorter being included within the longer. That law has been upon the statute books of Nevada for nine years. It has worked well. Not only has it never been violated, but there has never even been a whisper of a complaint concerning its operation. If it will work well in a State of 110,000 square miles, with between two and three thousand miles of railroad in operation, I can see no reason why it should not work well throughout the length and breadth of this land. They have the same law in Kentucky. In Kentucky, I think, it is a constitutional provision. That is my recollection. I believe they also have a similar law in the State of Missouri. The principle is absolutely right as a matter of sound business. It is wrong upon its face for any person, under any circumstances, to charge more for a lesser service than is charged for a greater, at the same time and place, and under the same circumstances and conditions, and that should apply to transportation, because the railroads are selling transportation.

In conclusion I want to say, Mr. Chairman, that in my judgment, after listening to the hearings from beginning to end, I am forced to the belief that the overwhelming weight of argument is in favor of the enactment of this bill into law. As I have remarked, there has not a word of protest come directly from any business interest in this country, except as Mr. Mann claims to represent all the shippers in California, but none of those people have been represented here by immediate and direct representatives. It has come from the coast cities, which have a strictly local interest to serve, and it has come from the rail carriers themselves, all hoping that when the war is over and normal conditions are restored, they may have the privilege of returning to the old order of things and restoring the discrimination of which the intermountain country and other parts of the country have so loudly and so long complained. We are not at all impressed with the contentions of our coast friends that the intermountain country is being benefited by being subjected to discriminations in freight charges, by being compelled to pay more than is charged to other people. We live way off there by ourselves, and the country is sparsely settled, but we have schoolhouses and we have colleges and we know a few little things, and we know that we are not benefited by being charged more for a certain service than is charged to somebody else.

Upon the whole, I think that the weight of argument is overwhelmingly in favor of the enactment of this bill, and that even though it might be pointed out that in sporadic cases some little harm might take place, the good will vastly outweigh the harm.

Now, Mr. Chairman, I want to thank you for your very kindly consideration to me throughout the whole of this hearing. I have talked at considerable length, because it was assigned to me to round out the discussion on behalf of the proponents of the bill, every one of whom has made a strong and effective statement before you, but the most of those statements were more or less special in their character, approaching the subject from some particular angle, while in rounding out as best I could in a scattering way I have endeavored to cover it generally and to meet some of the leading contentions that have been made against it. How well I have succeeded is for the committee itself to determine. I am through.

The CHAIRMAN. Are there any questions to ask?

Senator MYERS. Judge, I am sorry I did not get to hear all of your discussion. What interest do you represent here?

Mr. BARTINE. Why, I am the chairman of the Nevada Railroad Commission, and I represent the entire State, officially, and I am acting by virtue of a specific statutory direction.

Senator MYERS. I did not know your official position.

Mr. BARTINE. I represent no special interest whatever.

Senator MYERS. I will ask you two or three questions. You claim, do you, that the terminal rates which the railroads had before this order of the Interstate Commerce Commission and before the European war were remunerative, or yielded a net profit to the railroads themselves, do you?

Mr. BARTINE. I most certainly do, and I wish you had heard my entire statement. I gave some figures having an important bearing upon that very point.

Senator MYERS. I will read all of your statement.

Mr. BARTINE. I not only claim it, but I think we absolutely proved it. Of course, I would not say, Senator, that it yields as much profit as they would like to have, but fairly and reasonably they were paid.

Senator MYERS. Do you think that in times of peace, with the ships back on the water, that the rates to interior points could be reduced to what the coast points were in time of peace, and the whole railroads could be operated under them at a profit?

Mr. BARTINE. I certainly think that they could. I will tell you what I showed, and in order not to encumber the record, I would suggest to the reporter that he do not take this. It will be somewhat in the nature of repetition. We showed in the Reno case, Senator, that upon westbound traffic, assuming that the whole westbound tonnage of the Central Pacific road, which is the main line running through Nevada, were left off at Reno, instead of being carried through to the coast and charged at the coast rate, it would yield that company 13½ per cent net profit upon the value of the property involved.

Mr. SHAUGHNESSY. What value?

Mr. BARTINE. The value of the property that was engaged in that haul.

Mr. SHAUGHNESSY. I mean the extent of the value.

Mr. BARTINE. The whole value claimed was \$216,000,000; no; that is on a basis of \$80,000 per mile.

Senator MYERS. It certainly ought to be high enough. Do you think if the rates to the coast were in time of peace raised a little, and rates to interior points were correspondingly lowered, that that alteration would drive the railroads out of the coast business? That they would lose all of their coast business?

Mr. BARTINE. I certainly do not. I certainly do not; and I wish you had heard my statement in full, in which I tried to cover that coast situation pretty fully.

Senator MYERS. I will read it. You do not believe, then, that charging a little more than an equivalent rate to coast points would deprive the railroads of substantially all transcontinental business?

Mr. BARTINE. I certainly do not; and let me give you a state of facts which will furnish a reason for my belief. In the first Reno hearing Mr. Luce, who represented the railroad, as its traffic expert, stated that the average rail charges were from 30 to 40 per cent above the water charges, and in the face of that fact, up to that time, the railroads had succeeded in getting 93 per cent of all the coast-to-coast traffic.

Senator MYERS. You do not subscribe to the theory, then, that if those low rates were put in effect in times of peace, with ships back on the water, that it would result in increasing the rates to the interior points?

Mr. BARTINE. I do not. I do not accept that theory at all about out-of-pocket cost, which I have been discussing here; that the carrying of that freight through to the coast at a little more than what it costs relieves it of a portion of its burden. On the contrary, the tendency is to increase the burden on all of the other traffic, because this out-of-pocket cost, as it is called, only relates to transportation expense, which represents about half of the total, and all the over-

charges, all the repairs to roadway and equipment, and all of the improvements would have to be borne by the remaining traffic, and the natural tendency, of course, would be in that case for the railroads, in order to preserve a full measure of return, to raise the rates where they could, but right there, of course, they will be confronted by the principle of reasonable rates.

Mr. SHAUGHNESSY. The point the Senator had in mind was this, if I got his question correctly: That if the railroad carriers had to forego the ocean-carriage business, would the carriers be permitted to raise the rates unreasonably, then, at all interior points?

Mr. BARTINE. I have answered that point, Mr. Shaughnessy, and answered it perfectly, I think. I say no.

Senator MYERS. Yes; I understood your answer. That is all I care to ask you. I will try to read your address, Judge, as well as all the other addresses.

Senator HENDERSON. I would like to have the Judge go into the matter as to whether or not he feels that this bill should be enacted now. There has been some question as to whether or not, on account of present conditions, the bill should be enacted now.

Mr. BARTINE. Upon that point I want to say that if I had not thought so I would certainly not have advised it at this time, and I was very much impressed with the suggestion thrown out by Senator Pomerene the other day that the existence of war conditions will not justify the maintainance of an unjust discrimination. It can not be the policy of the United States Government to practice discrimination against any portion of its people. That certainly will not strengthen the hands of the Government for war purposes, and I do not see how the enactment of a long-and-short-haul law would, in any way, interfere with governmental operation of the roads, the transportation of troops, provisions, and supplies and munitions of all kinds, and it does not make any difference who operates the roads or who owns the roads. A wrong is always a wrong. If it is wrong for a railroad, operated privately, to charge more for a shorter haul than a longer one, it would be equally wrong for the Government to do it; and it can not be otherwise, in my judgment. I do not see how it could cripple or hamper the Government in the slightest degree in the prosecution of the war. Is that full enough?

Senator HENDERSON. Yes.

Mr. SHAUGHNESSY. May I have a few moments, Senator, to put in a few remaining appearances here?

The CHAIRMAN. Yes.

Mr. LYON. I would like to ask some questions.

The CHAIRMAN. Questions of Mr. Bartine?

Mr. LYON. Questions of the judge—just two or three questions.

The CHAIRMAN. If the judge desires to answer them, I have no objection.

Mr. LYON. Judge, what do you understand is meant by this equivalent rate that is continuously spoken of?

Mr. BARTINE. In what connection?

Mr. LYON. That is, they speak of a rate by rail that is equivalent to a water rate.

Mr. BARTINE. Oh, well. I will tell you what I understand by that. It has been said repeatedly that with reference to most articles that are transported, rail service is considered more desirable than water

service, and, therefore, the railroads can charge something more than the water carriers can and still get the business, and the higher charge thus made by the rail carriers is the equivalent of the water rate. It is the rate which they can make above the water rate and meet the water competition. That is what I understand by it.

Mr. LYON. Now, I wanted to develop that. Now, when you speak of meeting water competition, what did you understand? What portion of the business do they get?

Mr. BARTINE. I understand that it means to cut out some of it; to take away from water carriers some of it, because otherwise it is not met.

Mr. LYON. Have you any understanding of what proportion of it shall be taken away from the water lines?

Mr. BARTINE. Certainly not; no human being can figure upon that, and it is one of the principal reasons why these concessions should not be made to the rail carriers at the point of competition, to enable the railroads to meet the water carriers, because if they cut a little too low, they not only meet it legitimately and get a proportion of the traffic, but they drive the water carriers out entirely. It would take omnipotence to draw the line at just the right point.

Mr. LYON. Has the commission or the railroads any principle upon which they establish what they call the equivalent rate?

Mr. BARTINE. I do not think they have.

Mr. LYON. If the commission establishes what it used to call an equivalent rate, and there is no change in the movement of freight—that is, it continues to move by water—don't you understand they will permit a general reduction of the rate?

Mr. BARTINE. Certainly, I do.

Mr. LYON. Therefore, there is no meaning to this word "equivalent"?

Mr. BARTINE. No; I do not know that there is, more than what I have told you.

Mr. LYON. Except the purpose is to make a rate that will take the business from the water lines?

Mr. BARTINE. Yes.

Mr. LYON. On the general question of the intermountain territory, I understand from my observation of this fight for the last 25 or 30 years that the objection of the intermountain territory country is really to the administration of the fourth section, is it not—that it has not been administered?

Mr. BARTINE. I do not like to answer that question in too general terms, but if you will permit me, I will give you a brief explanation of how we have felt with regard to it.

Mr. LYON. I mean, does not the intermountain territory feel that in the administration of this law, first by the railroads, prior to 1887, subsequent to 1887 under the fourth section, under substantially similar circumstances and conditions, and subsequently to 1910 under the special case provision that in one way or another the coast cities have gotten something that the water lines could not confer upon them, and that has injured the interior? Is not that substantially your complaint?

Mr. BARTINE. That is certainly so; yes.

Mr. LYON. If you had had omnipotence here, and this law could have been so administered that railroads did not give the coast

anything other than what the steamships gave it, substantially, the interior would have little ground for complaint; is that not true?

Mr. BARTINE. The interior would have just complaint under any circumstances, if the railroads gave preferential rates at coast points lower than those charged at the nearer points, regardless of the ships—leaving them entirely out of consideration, whether they were there or were not there.

Mr. LYON. But, aside from that, is it not the opinion of the interior that the coast cities have gotten something in addition to what the ships could confer upon them, and that has aggravated the situation in the interior?

Mr. BARTINE. That we have got something in addition?

Mr. LYON. No; the coast cities have got something in addition.

Mr. BARTINE. Oh, undoubtedly. There is no question in the world, Mr. Lyon, that while I do not recognize water competition as having been a controlling force, as Judge Prouty expressed it in the Spokane case, it has had some influence, and it is quite likely that the rail carriers have made lower rates than they otherwise would, but I have never conceded that they made them so low as to be unprofitable, but they have been confronted by the fact always that if they put them up too high they might run into competition.

Mr. LYON. On the same line, speaking of these one hundred and sixty-odd terminal points, not points directly affected by water competition, but which were given terminal rates, which I think was forbidden by the commission after 1914, it was a fact that during all of this period that the interior had been fighting in this contest, that with a law on the statute books that they must not charge more for greater than shorter hauls, except under substantially similar circumstances and conditions, when the commission has to make any special case, that the commission did not interpose any objection to the granting of these rates to the interior terminal points. Is not that true?

Mr. BARTINE. I do not know that I quite get the drift of that question.

Mr. LYON. Well, the terminal rates are granted to a great many points where there was no water competition?

Mr. BARTINE. Yes.

Mr. LYON. In 1914 the commission forbade it?

Mr. BARTINE. Yes.

Mr. LYON. In 1911, when the commission entered its decision in the Intermountain case, these terminal rates were made to these interior terminal points?

Mr. BARTINE. Yes.

Mr. LYON. And the commission did not object to that?

Mr. BARTINE. No; they were included.

Mr. LYON. That is, the administration of the law?

Mr. BARTINE. Yes.

Mr. LYON. That is one of the things you object to?

Mr. BARTINE. Certainly it is one of the things we object to.

Mr. MANN. As to these interior terminal points, the fact is, is it not, that this cordon of interior terminals includes Sacramento, Stockton, and San Jose, which was established a great many years ago, and that the rest of the terminals took the terminal rates be-

cause they happened to be situated between the ports—that is, San Francisco, and Sacramento, and Stockton; is not that so? This is, such points as Richmond, Portland, Port Costa, and Antioch—small points, but located between these larger cities of the interior, and, therefore, conceded those rates, because the carriers could not deny to them—

Mr. BARTINE. That does not in any way affect the question propounded by Mr. Lyon. The fact was that in the first fourth-section order of the commission, the graduated scale of rates, or the graduated scale which the carriers were authorized to put in, applied to those interior terminals just exactly the same as to those where there was deep water, but when the schedule C order was made they were all cut out. The matter was brought very forcibly to their attention that there was no good reason why they should retain those special privileges.

Mr. MANN. Is not that the first time it ever was brought to their attention?

Mr. BARTINE. No; I think you are mistaken. Your predecessor, Mr. Mann, Mr. Wheeler, in his argument made that same contention, and he had a map as large as that mirror, stuck up upon the wall, and he showed by points the various interior terminals, and he argued insistently that the water competition should be confined to the points where the water actually was, and our mutual friend, Bradley, was very angry about it, and I had some fun at the expense of both of them. I suggested that when rogues fall out honest men sometimes get their dues.

Mr. MANN. But during that period was it not a fact that the water carriers made the same rates to Sacramento and Stockton that they did to San Francisco? And were not those withdrawn when the water carriers ceased to make that absorption?

Mr. BARTINE. I think that has been so sometimes and sometimes not.

Mr. MANN. Was it not so up to the time that the Panama Canal was completed?

Mr. BARTINE. I could not say with regard to that matter of detail.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, April 2, 1918.

The committee this day met, Hon. Thetus W. Sims (chairman) presiding.

The CHAIRMAN. Our colleague, Mr. Hardy, wishes to make a statement with reference to the long-and-short-haul bill. I asked him to come up this morning and told him we would try to hear him first. He said he would have a comparatively short statement to make.

**STATEMENT OF HON. RUFUS HARDY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS.**

Mr. HARDY. Mr. Chairman and gentlemen, my statement will be quite short. I have asked to be heard because I believe the bill before you is of the greatest importance to my people who all belong to that part of our common country which has suffered and continues to suffer and bear unjust burdens under the evil practices sought to be prohibited by this bill.

I live in a section where there is no water competition, real or possible, and where rates are all exclusively high. We boast an average freight rate in the United States of 7 mills per ton-mile. The people of my district pay about 5 cents per ton-mile on cotton in carload lots over a long haul of 250 miles, and yet cotton so shipped, being easy to handle and almost indestructible, ought to bear one of the very lowest commodity rates. Again, the freight rate on cotton from Memphis to New Orleans is, or was, when I examined the question last only about 0.75 of 1 cent per ton-mile, on account of the potential water competition. The freight on a 500-pound bale of cotton from Memphis to New Orleans, 456 miles, was 85 cents, while from Corsicana to Houston, 208 miles it was \$2.45. Again, some years ago when our State commission proposed to and did reduce the rate on cotton by 5 cents on the hundred pounds from points like Corsicana to Houston the roads claimed and tried to prove that the reduction would bankrupt them, and yet after that, in order to prevent cotton going by water from Houston to New Orleans, they applied to the Interstate Commerce Commission, so the papers stated, to be allowed to haul cotton by rail from Houston to New Orleans for 12½ cents per hundred, or 62½ cents per bale. I did not follow up to see if they got permission.

The railroad rate to-day on lumber from Beaumont, Tex., via Corsicana, Tex., to Memphis, Tenn., is less than it is to Corsicana, simply to prevent possible shipment by water from Beaumont via Sabine Pass and the Gulf and the Mississippi River to Memphis.

I cite one more instance because of a letter I received yesterday. One shipper of wool last year shipped 1,500,000 pounds of wool from Boise, Idaho, first westward to Portland, some 500 miles, in order to get the low rate given from Portland to New York or Boston. As I recall the letter, the goods were shipped back via Boise to New York or Boston, and the shipper saved big money by shipping this way rather than shipping east direct to New York. In this performance some 40 freight cars were used some 10 days each in useless transportation, marching up the hill and down again, and 750,000 ton miles of freight carried, without benefit and to the great detriment of the commerce and industry of the country. Instances of like kind run into the millions, and are found everywhere, especially in the South and the West. Railroads are not owned by imbeciles, idiots, or lunatics. There must be a great purpose in mind when they pursue such a course. What is the purpose, and what are the results? The purpose is to absorb all our inland transportation, and the first result is the absorption practically of all of it. The second is that all our inland waterways are unused for transportation purposes; and the third is that the aggregate amount of freight charges paid by the public are vastly increased. The first and second of these results are so because the roads reach out into and criss-cross the country, and must be used to bring the freight to the water-competing points, and when they are allowed to charge as they please for bringing the freight to the water, they can charge nothing if they please for the competitive haul and still make a charge which is highly remunerative in the aggregate, and their practice has been to make their charges for competitive haul so low that boats on free rivers and free canals can not compete. To clarify by example, take Memphis to New Orleans: The great Mississippi runs between

them; the railroad, 456 miles long, runs between them, leaving the banks of the river and passing through hundreds and thousands of villages and towns away from the river front. Now, at each one of these inland towns they fix their rates shrewdly, so as to make up of the charges levied against these communities an aggregate of freights sufficient for all needed dividends and income, and thus are enabled to fix their charges from Memphis, where there were wharves, at any old rate, just low enough to prevent any sane man from trying to operate a boat on the river, and I am told that in times past they have, when driving off the last of the lingering boat traffic, hauled cotton to New Orleans at 50 cents per bale, or 10 cents per 100 pounds. That was years ago, and the Mississippi became an unused waterway. If they could thus dry up the Mississippi, what chance was there to profitably navigate any lesser waterway? So, all our rivers have dried up.

The third result is that the aggregate amount of freight charges paid by the public is vastly increased over what it would have been had our waterways been used for all practical purposes. This is true because the actual cost of water transportation in bulk on any reasonably navigable river is less than half the actual cost by rail. If we would use all of our waterways to the full which would embrace our rivers, canals, lakes, and coast seas, without the cut-throat competition and with the forced cooperation of the roads, two-thirds of our long-distance, slow-going freight would go by water; 90 per cent of the nonperishable freight from Atlantic to the Pacific and Gulf coast and vice versa, would go by water. Fifty per cent of the freight of the upper reaches of the Mississippi for export, or shipment to the far South would be drawn to cities on its banks and travel down its waters, and as the years go by a greater and greater proportion of all our freight would move by water, and, of course, at a far less cost than it can ever go by rail. Meantime, every railway now built would have left all the freight it could handle, consisting of commodities that could not reach the waterways or that for good reasons were better shipped by rail. For this service the public would pay a just sum, but by using both the railway and water carriage the average unit of transportation cost would be greatly lowered.

The proposition is so plain it need not be argued. Meantime new and additional rail construction would be limited and adequate to the public need. The cost of operation of water and rail transportation combined, and adequate to our greatest need, would be far less than that of the rail alone to do all our carrying, and, therefore, our aggregate freight would be far less. Just a sentence to say that the reason why the roads desire to absorb water transportation and do the whole business, is obvious, but I forbear to discuss it. I might add that the railroads have accomplished their purpose of total absorption of transportation, not only by low rates where water transportation might have existed, but by leasing or buying up water transportation and instrumentalities and then throwing them into the discard, as witness the Chesapeake and Ohio Canal, or by owning waterway ship companies and operating them solely in the interest of their railways, throwing, of course, any wastage and expense incurred on the public by heavier freight rates.

The fourth result is that unjust and disproportioned burdens are placed on the cities and communities away from water lines and unnatural advantages given to cities that have actual or potential water transportation. The railroads not only take away from interior points all the advantages they naturally possessed, but tax those points in doing it to procure the funds needed for that purpose. All towns that pay high rates are taxed thereby to enable the roads to provide low rates for the favored places which are their competitors, and so interior towns are torn down and water-competitive towns are built up, and these interior towns and the general public are made to bear unjust burdens for their own undoing. The only arguments made by the railroads to support this injustice are, first, that they are entitled to compete with waterways, and, second, that towns and water-competing points would be deprived of their natural advantages if they were not allowed lower rates by rail as well as water than their interior competitors.

These are the two arguments I heard presented to this committee in opposition to the pending bill by a railroad representative a day or so ago. As to the first proposition, the railroads are entitled to compete with waterways, if they can compete, and as far as they can compete, but simply levying on helpless communities whatever tribute is needed to overcome cheaper rates offered by water transportation at competitive points is not competition. It is simply the old device of underselling your competitor at one point by selling at a loss or no profit there, while raising your prices all over your whole field. This is what is constantly done by big business in crushing out small and local competition in order to secure an ultimate monopoly.

As to the second proposition: It seems strange to me that our Interstate Commerce Commission should ever have been persuaded that San Francisco or Seattle had a natural right, not only to the advantage given them by the Creator, by reason of having the ocean highway at their door, which gives them cheaper rates to New York than any point back in the interior, say, 100, 200, or a thousand miles could possibly have on such commodities as could be carried by sea, but that they should have the added advantage of cheaper rates by rail on all commodities coming from or going to New York.

It is all the more strange that the commission should have been so persuaded when just a little thought would have shown to them that the application of the same principle would result, as it has resulted, in the destruction of all inland waterway transportation and the exclusive utilization of railroads for our entire internal transportation at an immensely increased aggregate cost to the public.

That little paragraph condenses the large reason that ought to support the bill before the committee.

It was argued here that in order to enable railroads to compete at San Francisco with ocean rates to New York, they should be allowed to carry freight to San Francisco at any rate which would not involve an actual loss.

I submit that justice and equity require that each part of a railroad and each community served by a railroad should pay its equal proportionate part of the aggregate required earnings of the railroad; otherwise the people of one section will be required to bear the burden of furnishing the people of other sections railroad facilities

at cost or less than cost, and examples that have come to my notice show conclusively that much of the rail transportation between water-competitive points under the prevailing railroad rates is furnished below actual cost.

The contention by the railroads that cheap rates for competing points add no burdens to the intermediate points; that it is possible to give these cheap rates because they would otherwise have unused freight capacity along a great portion of their road is simply plausible but a monstrous perversion of the facts and ought not to be dignified by calling it an argument. It is the same proposition that a lone voter makes in claiming that he alone elected a candidate to office because he cast one vote and the candidate was elected by one majority. The truth is every voter equally contributed to the result, and every pound of freight in a box car costs as much as any other pound in transportation, none of it goes without cost.

I would like to present, gentlemen, a clear statement of what it seems to me would result from a right adjustment of freight charges along the whole line of every railway.

The right adjustment, it would seem to me, would simply require that the railroads charge for the service actually rendered, and no more or less in all cases, possibly with the exception of some freight that might be carried at less than cost on the ground of the general good or the public welfare, and in that case the whole public should be taxed to make up the loss. On this theory we would find that every locality would retain every advantage given by nature in its location. The railroads coming into San Francisco from the east would draw from inland as far eastward as would enable the shipper to reach New York via San Francisco cheaper than he could by sending his goods directly eastward from the point of shipment to New York. That is to say, here is San Francisco, and the sail around to New York is here [indicating]. San Francisco would draw inland every commodity that could go to San Francisco at reasonable rates and still reach New York by water cheaper than it could go back this way—that is, eastward from point of shipment to New York.

The territory drained from inland to San Francisco for ocean shipment to New York or any other point on the Atlantic seaboard would thereby become very much larger. San Francisco would draw much of its ocean freight from distant inland points and there would certainly be no shipments into San Francisco and then out again over the same track going eastward. Double haulage of goods would end and all instances of greatly increased length of haulage over the naturally shortest way would likewise end in the course of time. The same thing that would happen at San Francisco would happen at every other rail-water competitive point in the United States, and this would still leave the waterside cities an immense natural advantage. Railroads would soon adjust themselves to the new rule and the final result would be that our waterways would carry most of the nonperishable, slow-moving bulk freight, while our railroads would carry the higher-priced or perishable freight and package freight and freight demanding quick transit.

Just one thing further. In passenger traffic the railroads doubtless have pursued the same policy they have in freight, but, fortunately, when they charge more for a short haul than they do for a

long, the passenger simply buys the long-haul ticket and gets off the train when he reaches the point he wishes to stop at. The freight can not do that. Notwithstanding the railroads, because of the fact just stated, have not been able to charge passengers more for a short haul than they do for a long haul, they, nevertheless, continue to run passenger trains between water-competitive points.

When the law of 1910 was passed it was hoped that the unjust burdens of the old railroad practices would be removed, but our hopes apparently have been in vain, since the law permitted the then existing discriminations to continue and permitted the Interstate Commerce Commission to authorize additional discriminations under their discretion. The railroads have been shrewd enough, it appears at times, to pervert the judgment of the Interstate Commerce Commission and secure additional discriminative rates, while holding on to the millions of unjust rates that existed when the law of 1910 was passed.

The only effective remedy for the situation is a positive, unequivocal law, such as the one now before the committee, which absolutely prohibits charging more for a short haul than for a long haul. If this law is passed, I venture to believe that within a few years every possibly navigable river in America, and hundreds of miles of canals, will be covered with barges and boats carrying billions of tons of our commerce. Railroads will continue to run, earning fair and just dividends and carrying freight at just and reasonable rates, and we will utilize the priceless gift of our waterways to their fullest extent.

The CHAIRMAN. Mr. Hardy, I think you have submitted something which will be very valuable to the committee in considering this bill.

Mr. STEPHENS. I suppose you advocate equalizing rates between interior points rather than lowering the rates at the interior points to equal the water rates to the port.

Mr. HARDY. I think that in hundreds and thousands of instances the competitive rates at the water ports are really below cost, and if they are not below cost that fact may be ascertained. If they are not below cost then the intermediate rates are double and treble what they ought to be. For instance, the average rate per ton-mile is three-quarters of a cent throughout the United States, and we pay 5 cents per ton-mile on our cotton, the best freight we have, from Corsicana—the freight that ought to be shipped cheapest—that is never shipped in package but always in car-load lots. A bale of cotton is indestructible, a freight wreck will not damage it, and even a fire can hardly destroy it; it can fall off the highest embankment into the deepest river and not have any harm done to it; and yet for that they charge us, instead of three-quarters of a cent per ton-mile, 5 cents per ton-mile, and they are ready to swear that to reduce that charge of 5 cents would bankrupt the roads, and they can produce figures to beat the band.

Mr. STEPHENS. The fair rate would be an equalization?

Mr. HARDY. A readjustment would require a raising of the rates at the water-competitive point and a lowering of the rate between the two, and each shipper would pay for the service rendered.

The CHAIRMAN. If the rate they have charged on cotton is a just and reasonable rate, then to take cotton for 12½ cents from Houston to New Orleans, a greater distance, would amount to—

Mr. HARDY. Would be less than a fourth of that reasonable rate.

The CHAIRMAN. It does not seem that it could possibly cover the cost unless the other is a very high rate?

Mr. HARDY. Take the rate from Memphis to New Orleans of 7 cents a hundred as compared with the charge of 55 cents to us.

Mr. SANDERS. I have known them to take cotton from Memphis to New Orleans for 50 cents a bale.

Mr. HARDY. Just before they closed out the last shipments on the river there were a couple of big boats there seeking a cargo, and the railroads went around and engaged every bale of cotton in Memphis at 50 cents a bale in order to keep those boats from getting it.

Mr. SANDERS. And then they promptly raised it to a dollar and a quarter.

Mr. STEPHENS. What would have been a fair rate?

Mr. SANDERS. A dollar a bale.

Mr. HARDY. If a dollar is a fair rate from Memphis to New Orleans, which is 456 miles, what would be the fair rate from Corsicana, which is 208 miles?

Mr. DOREMUS. Can some one tell us what the compelling reason was for the amendment of 1910? There must have been some reason for that, and I would like to get some idea as to the circumstances or conditions which surrounded this amendment in 1910. There must have been a demand for it.

Mr. HARDY. I think I can explain that situation. The intermountain people were complaining and demanding some relief from the very burdens I have been speaking of here. The old law had a simple, plain provision of this sort, that the railroads shall never charge less for a long haul than for a short haul, but with a proviso.

The CHAIRMAN. The language of the proviso was, "under similar circumstances and conditions."

Mr. HARDY. Yes; that meant that the railroads should never charge more for a short haul than for a long haul unless they wanted to, because you could never find any two situations where the conditions were exactly the same. So that proviso has been generally utilized by the railroads to lower rates at every water-competitive point until they drove off competition, and then to do as they should think proper.

Mr. SANDERS. It has been generally utilized to nullify that provision.

Mr. HARDY. Absolutely. It has been so utilized that there was no long and short haul clause left.

Mr. DOREMUS. Do I understand that the demand for the amendment of 1910 came from the intermountain States?

Mr. HARDY. Yes; the first speech I made in Congress was on this question.

Mr. DOREMUS. The people who demanded this amendment in 1910 are now asking that it be repealed?

Mr. HARDY. We want now what we wanted then. We then wanted just what is in this bill; but a compromise was made with the friends of the railroads privilege, and they are just as good men as I am; but men get to seeing things through colored glasses. The compromise was to retain the long-and-short-haul clause and change the condition, so that they should not establish any new discriminatory rates unless they had first gotten the permission of the Interstate

Commerce Commission, and also permitting the old rates to stand until changed, if the roads made application to continue them within six months.

The CHAIRMAN. Those applications were for six months, and I think any application filed within the six months was finally determined by the commission.

Mr. HARDY. Application by whom?

The CHAIRMAN. By the railroads, to permit them to continue the old rates under the new law, which was that they must show, no longer similar circumstances and conditions, but special cases in which the commission might grant them a rate which would charge less for a long than for a short haul going in the same direction.

Mr. HARDY. Or the commission might permit them to continue the old rates.

The CHAIRMAN. No; there was a six months provision in the act before it became applicable to all rates alike, and during that time the railroads might file applications to be permitted to continue the old rates by showing their special cases, and the rates existing when they filed the applications would continue until finally decided by the commission.

Mr. HARDY. That is very true and very interesting, gentlemen. Let me make this statement, Mr. Doremus, as applicable to that law when it passed. I fought it with all the force I could command, and said to them then that when they put off the correction of these discriminations until after a hearing in each case by the Interstate Commerce Commission, they would be years and years getting the change, if they ever got it.

Mr. DOREMUS. What did you want to do in connection with this amendment of 1910?

Mr. HARDY. I was seeking to substitute for it an unconditional long-and-short-haul clause, just as this bill here.

Mr. DOREMUS. Was not that what you had before the amendment of 1910?

Mr. HARDY. I think the gentleman could not have heard what I have said. Before this amendment, in 1910, we had a long-and-short-haul clause, but it was conditioned.

The CHAIRMAN. There was a proviso.

Mr. HARDY. The condition was that the railroads might charge more for a short haul than for a long one, if the conditions or circumstances were dissimilar.

The CHAIRMAN. But without having to apply to the commission.

Mr. HARDY. They did not have to apply to anybody. Wherever the railroads said that the condition was different they assumed the privilege, and nobody could question it, of charging less for those long hauls. The result of that was that they practically blotted out the long-and-short-haul clause.

Mr. DOREMUS. In 1910 the long-and-short-haul clause was amended so as to permit the Interstate Commerce Commission to grant certain exceptions upon application. Did you favor the amendment as it was finally adopted?

Mr. HARDY. I think I can make it so plain that you will understand my position. The long-and-short-haul clause was never changed, but the condition authorizing a charge of a greater sum for a short haul than for a long haul was changed. Under that old law

there practically was no long-and-short-haul clause, because it was left in the discretion of the railroads to violate it by claiming different conditions. The new law of 1910 sought to remedy that, to take away that discretion from the railroads, and provided that they could not make a greater charge for a short haul than for a long haul without first getting the permission of the commission. They did not have to get any permission before that. We thought the restraining hand of the commission would prevent the railroads from charging more for the short haul than for the long haul. Before that no power existed to prevent them from doing so. The 1910 law was intended to put some curb on them. I contended at the time that it would not put any curb on them, but with the hope that it was better than no law at all I voted for it. It has turned out as I predicted.

Mr. SANDERS. I remember the fight of 1910. It was to get away from the abnormal conditions that had grown up under section 4 as it then stood.

Mr. HARDY. Yes.

Mr. SANDERS. And the amendment to-day is suggested because the amendment of 1910 did not do as its proponents hoped it would do.

Mr. HARDY. In other words, the law to-day is to do what I wanted it to do then but which I could not get it to do, and I took a half loaf, as I supposed, and it turned out I did not even get a crumb.

The CHAIRMAN. We will have to proceed with this other bill now, but we do not desire to cut your statement short at all. However, you are where you can be reached and we can consult with you if desired when we take up the measure.


Mr. HARDY. Gentlemen, I am very much obliged to you.

Mr. STEPHENS. I think you have made the best argument of anybody who has appeared before us here.

Mr. HARDY. I am very much obliged to you.

(Thereupon, at 11.30 o'clock a. m., the committee proceeded to other business).

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